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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1990

Addendum

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND: DEPENDENT TERRITORIES *

[30 April 1992]

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* The initial report of the United Kingdom of Great Britain and Northern Ireland reproduced in document CAT/C/9/Add.6 was considered by the Committee against Torture at its 91st and 92nd meetings, held on 13 November 1991 (CAT/C/SR.91 and 92).

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ANGUILLA

Part I: Information of general nature

1. The United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) on behalf of Anguilla, among other territories, and the Convention took effect for Anguilla, pursuant to Article 27, on 7 January 1989.

2. The European Convention on Human Rights has been in force for Anguilla since 23 November 1953. Article 3 of that Convention provides that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

3. By successive declarations made since 14 January 1981 (currently declaration of 11 January 1991), the United Kingdom has accepted in respect of Anguilla the right of individual petition under Article 25 of the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights under Article 46 of that Convention.

4. The Constitution of Anguilla is contained in the Schedule to the Anguilla Constitution Order 1982, as amended by the Anguilla Constitution (Amendment) Order 1990. The Anguilla Constitution Order 1982 came into operation on 1 April 1982.

5. The Constitution contains, in its Chapter I, provisions for the protection of the fundamental rights and freedoms of the individual. These provisions include, in section 6, the requirement that "No person shall be subjected to torture or to inhuman or degrading punishment or other treatment".

6. Section 134 of the Criminal Justice Act 1988 of the United Kingdom which section came into force on 29 September 1988, made it an offence to torture a person in the circumstances there described. Sections 134 and 135 of that Act, modified as in Schedule 1 to the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988, was extended to Anguilla and to other territories by that Order, which came into force on 7 January 1989. A copy of the / Order is annexed to this report.

7. It is also an offence under section 1 of the Geneva Conventions Act 1957 of the United Kingdom to commit a grave breach of any of the four Geneva Conventions governing armed conflict. One such grave breach is torture of a protected person or the subjection of him to inhuman treatment. By

virtue of the Geneva Conventions Act (Colonial Territories) Order in Council 1959, as amended, that Act extends, with specified exceptions, to Anguilla and other territories.

8. In addition, it has long been an offence in Anguilla, under the common law, to assault a person. Recourse to torture would, in some circumstances, involve the commission of assault or other, more serious, offences - for example, murder. An assault also gives rise to a breach of the civil law and can found a civil action. The conduct prohibited by the criminal or the civil law includes conduct which may fall short of torture but which may amount to cruel, inhuman or degrading treatment or punishment.

9. The law also ensures that a confession made by an accused person may not be given in evidence against him if it was obtained by oppression.

10. These matters are, as appropriate, dealt with more fully where they arise in Part II of this report.

Part II: Information in relation to the Articles in Part I of the Convention

Article 2

11. Under the law in force in Anguilla, conduct constituting torture as defined in Article 1 of the Convention would involve a number of possible serious offences. It would be an offence under section 134 of the Criminal Justice Act as modified and extended to Anguilla. It might also involve the commission of murder or some lesser offence under the Offences against the Person Ordinance - for example, unlawfully and maliciously wounding, or inflicting any grievous bodily harm, contrary to section 19 of the Ordinance, or unlawfully and maliciously administering any poison or other destructive or noxious thing, contrary to section 22 or 23.

12. A grave breach of any of the Geneva Conventions amounting to torture is also a serious offence under the law of Anguilla.

13. Assaults on the person are also actionable under the civil law of Anguilla.

14. Article 3 of the European Convention on Human Rights, which proscribes torture and other forms of ill-treatment, is among Articles from which it is not permissible to derogate under Article 15 of that Convention.

15. No exceptional circumstances nor any superior orders may, under the law in force in Anguilla, be invoked to justify torture.

Article 3

16. Under the extradition laws of the United Kingdom as extended to Anguilla and other relevant legislation applying there (for example, the Immigration and Passport Ordinance 1980) the authorities concerned would have a discretion not to expel, return or extradite a person to another State in a case where substantial grounds were advanced for believing that he would be in danger of being subjected to torture; and it is to be expected that the discretion would be exercised in accordance with the requirements of this Article.

Article 4

17. As indicated above, acts constituting torture are offences under section 134 of the Crimninal Justice Act as modified and extended to Anguilla, and torture may constitute other serious offences as well. Torture contrary to section 134 carries a maximum of life imprisonment. Grave breaches of the Geneva Conventions carry with them a maximum penalty of 14 years' imprisonment unless the conduct involves killing, in which case the maximum penalty is life imprisonment.

18. Where it is not specifically made an offence by legislation (as, for example, is attempt to murder by section 14 of the Offences against the Person Ordinance), an attempt to commit any of the relevant offences would itself amount to an offence under the common law. A person convicted of an attempt to commit an offence would be liable to a penalty no more severe than that to which he could be sentenced for the completed offence. Similarly, any person who becomes an accessory before the fact to any felony or who counsels, procures or causes any other person to commit any felony may be tried, prosecuted and punished as a principal offender (sections 2 and 3 of the Accessories and Abettors Act).

Article 5

19. The provisions of section 134 of the Criminal Justice Act 1988 as modified and extended to Anguilla apply by their terms to acts of the proscribed kinds whether "in the Territory or elsewhere" and to a person falling within either subsection (1) or subsection (2) "whatever his nationality".

Article 6

20. Where a person who is present in Anguilla is alleged to have committed torture, to have attempted to commit torture or to be guilty of complicity or participation in torture, the police, as the responsible authority in Anguilla for the prevention and detection of crime, would, on the matter coming to their attention, carry out an investigation into the facts.

21. Where such a person is suspected of having committed one of the relevant offences, steps available under the ordinary criminal law of Anguilla would be taken to bring him into custody or otherwise ensure his presence for such time as is necessary to enable criminal or extradition proceedings to be brought. In practice, given the seriousness of the offences, he is likely to be taken into custody.

22. No case falling within paragraph 3 or 4 of Article 6 has occurred in Anguilla since the entry into force of the Convention for the Island and no standing arrangement in relation to either paragraph has been thought to be necessary. If any such case were to occur, regard would be had to the requirements of the paragraph concerned.

Article 7

23. The long-standing practice of the relevant authorities in Anguilla as regards the investigation of alleged criminal offences and the consideration of prosecution for such offences conforms to the requirements of this Article. The Constitution also contains, in its section 9, provisions requiring that a person charged with a criminal offence shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

Article 8

24. Effect would be given to this Article under the extradition laws of the United Kingdom as applying in Anguilla. Section 136 of the Criminal Justice Act 1988, the effect of which is preserved by section 38(4) of the Extradition Act 1989, ensures that in existing arrangements with a State also party to the Convention, a person is extraditable where the offence for which he is wanted is torture contrary to section 134 of the 1988 Act.

25. The Extradition (Torture) Order 1991 (annexed)[1/] makes provision for extradition from Anguilla of persons accused of torture contrary to Section 134 of the 1988 Act, and an attempt to commit such an offence in the case of States Parties to the Convention.

1/ Document available for consultation at the Centre for Human Rights.

26. Section 22(6) of the Extradition Act 1989 and paragraph 15 of Schedule 1 to that Act re-enact section 136(2) of the Criminal Justice Act 1988, which provided that any act or omission, wherever committed which constitutes torture and a corresponding offence against the law of any State with which an extradition treaty has been concluded shall be deemed to be an offence committed within the jurisdiction of that State.

Article 9

27. Assistance of the kind required by this Article could be provided in accordance with the applicable extradition laws and with the provisions of the Evidence (Proceedings in Other Jurisdictions) (Anguilla) Order 1986, made in exercise of powers conferred by section 10(3) of the Evidence (Proceedings in Other Jurisdictions) Act 1975 of the United Kingdom. In addition, in the case of the United States of America, arrangements for mutual assistance in criminal matters are given effect in Anguilla by the Mutual Legal Assistance (United States of America) Ordinance 1990.

Article 10

28. The prohibition against torture is well understood by civil law enforcement personnel (Anguilla has no military forces), medical personnel, public officials and others who may be involved in the custody, interrogation or treatment of an individual subjected to any form of arrest, detention or imprisonment. The training programmes for such persons include instruction on the need to treat everyone with humanity and respect and to act within the law at all times. Such persons may also be subject to disciplinary codes, as to which they would of course be instructed, containing relevant prohibitions. For example, it is a disciplinary offence under Regulation 28(h) of the Police Regulations 1972 for an Inspector, subordinate police officer or constable to use any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty.

29. As regards categories other than law enforcement personnel, an example of a relevant prohibition by law is section 33 of the Lunacy and Mental Treatment Ordinance, which provides that an offence is committed by "Any superintendent, officer, nurse, attendant, servant or other person employed in an institution who strikes, ill-treats or wilfully neglects any insane person or patient confined in such institution". Similarly, it is an offence, where an insane person is confined in any licensed house, for the licensee or any nurse, servant or other person employed in such house or by the licensee to strike, ill-treat or wilfully neglect such insane person (section 36).

Article 11

30. The interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, are reviewed as necessary in the circumstances of Anguilla, where there has been no known instance of torture or any associated practice.

31. The Codes of Practice under the Police and Criminal Evidence Act 1984 of the United Kingdom, which superseded the "Judges' Rules", and particularly, in this context, the Code of Practice for the Detention, Treatment and Questioning of Persons by police, would be likely to be regarded by the courts of Anguilla as having persuasive force.

Article 12

32. The police are under a general duty to carry out, quickly and effectively, an impartial investigation of any alleged offence.

Article 13

33. The right of an individual who claims that he has been subjected to torture to complain, and to have his case promptly and impartially examined, as required by the first sentence of this Article, is secured by the general law of Anguilla. Steps would also be taken, under the general law, to ensure protection of the complainant and witnesses.

34. There are also special provisions for the handling of complaints in particular cases. For example, Rule 15 of the Prison Rules, made under section 26 of the Prison Ordinance, provides that "The Keeper shall at all reasonable times be ready to hear the complaints of any prisoner and, should he deem it necessary, shall report the same to the Administrator". Rule 69 provides that "Subordinate officers shall inform the Keeper of any prisoner who desires to... make any complaint. Any neglect in carrying out this rule will be severely dealt with".

Article 14

35. Acts which constitute torture within the meaning of Article 1 of the Convention constitute civil wrongs for which remedies are available in civil proceedings for, notably, trespass to the person. In such proceedings compensation for the pain and suffering and any other damage caused would be available, including exemplary damages where appropriate. Such proceedings stem from the common law.

Were a victim of torture to die as a result of his treatment, his dependents would be able to claim in respect of his death by virtue of the Fatal Accidents Act.

Article 15

36. The common law rule of evidence applies so that admissions obtained as result of torture or other oppressive means would not be admissible.

Article 16

37. As explained in Part I above, other international obligations which apply to Anguilla - notably, those of Article 3 of the European Convention on Human Rights - already required the prevention of acts of the kind described in this Article. The Government of Anguilla, which would view with grave concern any instance of unlawful ill-treatment committed by or at the instigation of or with the consent of a public officer or other person in an official capacity, has not considered that any change in existing law or practice there was necessary for the fulfilment of those obligations. In the light of judgments of the European Court of Human Rights, however, the position as regards judicial corporal punishment under the Corporal Punishment Ordinance 1967 is, at the request of the United Kingdom Government, under review.

38. Some instances of ill-treatment covered by this Article would amount to a criminal offence under the common law or be contrary to sections of the Offences against the Person Ordinance. The ill-treatment concerned could also provide a basis for civil proceedings.

MONTSERRAT

Part 1: Information of general nature

1. The United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) on behalf of Montserrat, among other territories, and the Convention took effect for Montserrat, pursuant to Article 27, on 7 January 1989.

2. The ratification by the United Kingdom of the International Covenant on Civil and Political Rights on 20 May 1976 also included Montserrat. Article 7 of that Covenant provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

3. The European Convnetion on Human Rights has been in force for Montserrat since 23 November 1953. Article 3 of that Convention provides that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

4. By declarations of 11 January 1991, the United Kingdom has accepted in respect of Montserrat, for a period of five years beginning on 14 January 1991 and ending on 13 January 1996, the right of individual petition under Article 25 of the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights under Article 46 of that Convention.

5. The Constitution of Montserrat is contained in Schedule 2 to the Montserrat Constitution Order 1989, which came into force on 13 February 1990.

6. The Constitution contains, in its Part IV, provisions for the protection of the fundamental rights and freedoms of the individual. These provisions include, in section 54(1), the requirement that "No person shall be subjected to torture or to inhuman or degrading treatment or punishment".

7. Section 134 of the Criminal Justice Act 1988 of the United Kingdom, which section came into force on 29 September 1988, made it an offence to torture a person in the circumstances there described. Sections 134 and 135 of that Act, modified as in Schedule 1 to the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988, was

extended to Montserrat and to other territories by that Order, which came into force on 7 January 1989. A copy of the order is annexed to this report.

8. It is also an offence under section 1 of the Geneva Conventions Act 1957 of the United Kingdom to commit a grave breach of any of the four Geneva Conventions governing armed conflict. One such grave breach is torture of a protected person or the subjection of him to inhuman treatment. By virtue of the Geneva Conventions Act (Colonial Territories) Order in Council 1959, as amended, that Act extends, with specified exceptions, to Montserrat and other territories.

9. In addition, it has long been an offence in Montserrat, under the Penal Code. Resource to torture would, in some circumstances, involve the commission of an assault or another, more serious, offence, for example, murder. An assault also gives rise to a breach of the civil law and can found a civil action. The conduct prohibited by the criminal or the civil law includes conduct which may fall short of tortue but which may amount to cruel, inhuman or degrading treatment or punishment.

10. The law also ensures that a confession made by an accused person may not be given in evidence against him of it was obtained by oppression.

11. These matters are, as appropriate, dealt with more fully where they arise in Part II of this report.

Part II: Information in relation to the Articles in Part 1 of the Convention

12. Under the law in force in Montserrat, conduct constituting torture as defined in Article 1 of the Convention would involve a number of possible serious offences. It would be an offence under section 134 of the Criminal Justice Act as modified and extended to Montserrat. It might also involve the commission of murder or some lesser offence under Part XII of the Penal Code, which is concerned with "Homicide and other offences against the person" - for example, wounding, or causing grievous bodily harm with intent to cause grievous bodily harm, contrary to section 163 of the Code, unlawfully and maliciously wounding or inflicting grievous bodily harm, contrary to section 164, or administering, or causing to be administered or taken, any poison or other destructive or noxious thing, contrary to sections 166 or 167.

13. A grave breach of any of the Geneva Conventions amounting to torture is also a serious offence under the law of Montserrat.

14. Assaults on the person are also actionable under the civil law of Montserrat.

15. International Covenant on Civil and Political Rights and Article 3 of the European Convention on Human Rights, both of which apply to Montserrat and which proscribe torture and other forms of ill-treatment, are among Articles from which it is not permissible to derogate under the provisions of either instrument which are concerned with derogation (Article 4 of the Covenant and Article 15 of the Convention).

16. No exceptional circumstances nor any superior orders may, under the law in force in Montserrat, be invoked to justify torture.

Article 3

17. Under the extradition laws of the United Kingdom as extended to Montserrat and other relevant legislation applying there (for example, the Immigration and Passport Act) the authorities concerned would have discretion not to expel, return or extradite a person to another State in a case where substantial grounds were advanced for believing that he would be in danger or being subjected to torture; and it is to be expected that the discretion would be exercised in accordance with the requirements of this Article.

18. Many of those protected by this Article would also be protected by Article 1 of the Convention relating to the Status of Refugees, which was extended to Montserrat on 20 April 1970.

Article 4

19. As indicated above, acts constituting torture are offences under section 134 of the Criminal Justice Act as modified and extended to Montserrat, and torture may constitute other serious offences as well. Torture contrary to section 134 or, for example, offences of wounding or causing grievous bodily harm contrary to section 163 of the Penal Code carry a maximum sentence of life imprisonment. Grave breaches of the Geneva Conventions carry with them a maximum penalty of 14 years' imprisonment unless the conduct involves killing, in which case the maximum penalty is life imprisonment.

20. Where it is not specifically made an offence by legislating (as, for example, is attempt to murder by section 153 of the Penal Code), an attempt to commit any of the relevant offences would itself amount to an offence under the common law. Where a person is convicted of an

attempt to commit an offence, if no specific penalty is provided for the punishment of such an attempt, the sentence which may be imposed is not to exceed that provided for punishment of the offence attempted (section 327 of the Penal Code). Similarly, section 19(1) of the Penal Code provides that "When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it ..... - (a) every person who actually does the act or makes the omission which constitutes the offence; (b) every person who does or omits to do any act for the purpose of enabling or aiding any other person to commit the offence; (c) every person who aids or abets another person in committing the offence; and (c) any person who counsels or procures any person to commit the offence".

Article 5

21. The provisions of section 134 of the Criminal Justice Act 1988 as modified and extended to Montserrat apply by their terms to acts of the proscribed kinds whether "in the Territory or elsewhere" and to a person falling within either subsection (1) or subsection (2) "whatever his nationality".

Article 6

22. Where a person who is present in Montserrat is alleged to have committed torture, to have attempted to commit torture or to be guilty of complicity or participation in torture, the police, as the responsible authority in Montserrat for the prevention and detection of crime, would, on the matter coming to their attention, carry out an investigation into the facts.

23. Where such a person is suspected of having committed one of the relevant offences, steps available under the ordinary criminal law of Montserrat would be taken to bring him into custody or otherwise ensure his presence for such time as is necessary to enable criminal or extradition proceedings to be brought. In practice, given the seriousness of the offences, he is likely to be taken into custody.

24. No case falling within paragraph 3 or 4 of Article 6 has occurred in Montserrat since the entry into force of the Convention for the Island and no standing arrangement in relation to either paragraph has been thought to be necessary. If any such case were to occur, regard would be had to the requirements of the paragraph concerned.

Article 7

25. The long-standing practice of the relevant authorities in Montserrat as regards the investigation of alleged criminal offences and the consideration of prosecution for such offences conforms to the requirements of this Article. The Constitution also contains, in its section 57, provisions requiring that a person charged with a criminal offence shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. The section also provides for a person arrested, detained or charged to have the right to legal representation at every relevant stage.

Article 8

26. Effect would be given to this Article under the extradition laws of the United Kingdom as applying in Montserrat. Section 136 of the Criminal Justice Act 1988, the effect of which is preserved by section 38(4) of the Extradition Act 1989, ensures that in existing arrangements with a State also party to the Convention, a person is extraditable where the offence for which he is wanted is torture contrary to section 134 of the 1988 Act.

27. The Extradition (Torture) Order 1991 (annexed)[1/] makes provision for extradition from Montserrat of persons accused of torture contrary to Section 134 of the 1988 Act, and an attempt to commit such an offence in the case of States Parties to the Convention.

28. Section 22(6) of the Extradition Act 1989 and paragraph 15 of Schedule 1 to that Act re-enact section 136(2) of the Criminal Justice Act 1988, which provided that any act or omission, wherever committed, which constitutes torture and a corresponding offence against the law of any State with which an extradition treaty has been concluded shall be deemed to be an offence committed within the jurisdiction of that State.

Article 9

29. Assistance of the kind required by this Article could, in extradition cases, be provided in accordance with the applicable extradition laws. Preparations are being made in Montserrat for the introduction of new legislation, to be modelled on the Criminal Justice (International Co-Operation) Act 1990 of the United Kingdom, to faciliate international co-operation in criminal matters.

1/ Document available for consultation at the Centre for Human Rights.

Article 10

30. The prohibition against torture is well understood by civil law enforcement personnel (Montserrat has only a small volunteer Defence Force), medical personnel, public officials and others who may be involved in the custody, interrogation or treatment of an individual subjected to any form of arrest, detention or imprisonment. The training programmes for such persons include instruction on the need to treat everyone with humanity and respect and to act within the law at all times. Such persons may also be subject to disciplinary codes, as to which they would of course be instructed, containing relevant prohibitions. For example, it is a disciplinary offence under Regulation 6(h) of the Police Regulations, made under section 71 of the Police Act, for an Inspector, subordinate police officer or constable to use any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty.

31. As regards categories other than law enforcement personnel, an example of a relevant prohibition by law is section 33 of the Lunacy and Mental Treatment Ordinance, which provides that an offence is committed by "Any Superintendent, officer, nurse, attendant, servant or other person employed in an institution who strikes, ill-treats or wilfully neglects any insane person or patient confined in such institution".

Article 11

32. The interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, are reviewed as necessary in the circumstances of Montserrat, where there has been no known instance of torture or any associated practice.

33. The Codes of Practice under the Police and Criminal Evidence Act 1984 of the United Kingdom, which superseded the "Judges' Rules", and particularly, in this context, the Code of Practice for the Detention, Treatment and Questioning of Persons by Police, would be likely to be regarded by the courts of Montserrat as having persuasive force.

Article 12

34. The police are under a general duty to carry out, quickly and effectively, an impartial investigation of any alleged offence.

Article 13

35. The right of an individual who claims that he has been subjected to torture to complain, and to have his case promptly and impartially examined, as required by the first sentence of this Article, is secured by the general law of Montserrat. Steps would also be taken, under the general law, to ensure protection of the complainant and witnesses.

36. There are also special provisions for the handling of complaints in particular cases. For example, 19 of the Prison Rules 1975, made under section 27 of the Prison Ordinance, requires the Superintendent of the prison to be ready on all occasions to receive and investigate any complaint and attend to any application from an officer or prisoner. Under Rule 102, prison officers are required to inform the Superintendent of any prisoner who desires to see him or refer any request to him or to the Governor.

Article 14

37. Acts which constitute torture within the meaning of Article 1 of the Convention constitute civil wrongs for which remedies are available in civil proceedings for, notably, trespass to the person. In such proceedings compensation for the pain and suffering and any other damage caused would be available, including exemplary damages where appropriate. Such proceedings stem from the common law. Were a victim of torture to die as a result of his treatment, his dependents would be able to claim in respect of his death by virture of the Fatal Accidents Act.

Article 15

38. The common law rule of evidence applies so that admissions obtained as a result of torture or other oppressive means would not be admissible.

Article 16

39. As explained in Part I above, other international obligations which apply to Montserrat - notably, those of Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention on Human Rights - already required the prevention of acts of the kind described in this Article. The Government of Montserrat, which would view with grave concern any instance of unlawful ill-treatment committed by or at the instigation of or with the consent of a public officer or other person in an official capacity, has not considered that any change in existing law or practice there was necessary for the fulfilment of those obligations. In the light of judgements of the European Court of Human Rights, however, the position

as regards judicial corporal punishment under the Corporal Punishment Act 1949, as amended, has, at the request of the United Kingdom Government, been reviewed and a decision has been taken to introduce legislation in Montserrat to abolish such punishment.

40. Some instances of ill-treatment covered by this Article would amount to a criminal offence under the Penal Code or the common law. The ill-treatment concerned could also provide a basis for civil proceedings.

TURKS AND CAICOS ISLANDS

Part I: Information of general nature

1. The United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) on behalf of the Turks and Caicos Islands, among other territories, and the Convention took effect for the Islands, pursuant to Article 27, on 7 January 1989.

2. The ratification by the United Kingdom of the International Covenant on Civil and Political Rights on 20 May 1976 also included the Turks and Caicos Islands. Article 7 of that Covenant provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

3. The European Convention on Human Rights has been in force for the Turks and Caicos Islands since 14 September 1964. Article 3 of that Convention provides that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

4. By successive declarations made since 12 September 1967 (currently declarations of 11 January 1991), the United Kingdom has accepted in respect of the Turks and Caicos Islands the right of individual petition under Article 25 of the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights under Article 46 of that Convention.

5. The Constitution of the Turks and Caicos Islands is contained in Schedule 2 to the Turks and Caicos Islands Constitution Order 1988. That Order came into operation on 4 March 1988.

6. The Constitution contains, in its Part VIII, provisions for the protection of the fundamental rights and freedoms of the individual. These provisions include, in section 69(1), the requirement that "No person shall be subjected to torture or to inhuman or degrading treatment or punishment".

7. Section 134 of the Criminal Justice Act 1988 of the United Kingdom, which section came into force on 29 September 1988, made it an offence to torture a person in the circumstances there described. Sections 134 and 135 of

that Act, modified as in Schedule 1 to the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988, was extended to the Turks and Caicos Islands and to other territories by that Order, which came into force on 7 January 1989. A copy of the Order is annexed to this report.

8. It is also an offence under section 1 of the Geneva Conventions Act 1957 of the United Kingdom to commit a grave breach of any of the four Geneva Conventions governing armed conflict. One such grave breach is torture of a protected person or the subjection of him to inhuman treatment. By virtue of the Geneva Conventions Act (Colonial Territories) Order in Council 1959, as amended, that Act extends, with specified exceptions, to the Turks and Caicos Islands and other territories.

9. In addition, it has long been an offence in the Turks and Caicos Islands, under the common law, to assault a person. Recourse to torture would, in some circumstances, involve the commission of assault or other, more serious, offences - for example, murder. An assault also gives rise to a breach of the civil law and can found a civil action. The conduct prohibited by the criminal or the civil law includes conduct which may fall short of torture but which may amount to cruel, inhuman or degrading treatment or punishment.

10. The law also ensures that a confession made by an accused person may not be given in evidence against him if it was obtained by oppression.

11. These matters are, as appropriate, dealt with more fully where they arise in Part II of this report.

Part II: Information in relation to the Articles in Part I of the Convention

Article 2

12. Under the law in force in the Turks and Caicos Islands, conduct constituting torture as defined in Article 1 of the Convention would involve a number of possible serious offences. It would be an offence under section 134 of the Criminal Justice Act as modified and extended to the Islands. It might also involve the commission of murder or some lesser offence under the Offences against the Person Ordinance - for example, wounding or causing grievous bodily harm with intent to cause grievous bodily harm, contrary to section 10 of the Ordinance, unlawfully and maliciously wounding or inflicting grievous bodily harm, contrary to section 11 or administering poison or other destructive or noxious thing, contrary to section 14 or 15.

13. A grave breach of any of the Geneva Conventions amounting to torture is also a serious offence under the law of the Turks and Caicos Islands.

14. Assaults on the person are also actionable under the civil law of the Turks and Caicos Islands.

15. Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention on Human Rights, both of which apply to the Turks and Caicos Islands and which proscribe torture and other forms of ill-treatment, are among Articles from which it is not permissible to derogate under the provisions of either instrument which are concerned with derogation (Article 4 of the Covenant and Article 15 of the Convention).

16. No exceptional circumstances nor any superior orders may, under the law in force in the Turks and Caicos Islands, be invoked to justify torture.

Article 3

17. Under the extradition laws of the United Kingdom as extended to the Turks and Caicos Islands and other relevant legislation applying there (for example, the Immigration Ordinance, as amended) the authorities concerned would have a discretion not to expel, return or extradite a person to another State in a case where substantial grounds were advanced for believing that he would be in danger of being subjected to torture; and it is to be expected that the discretion would be exercised in accordance with the requirements of this Article.

Article 4

18. As indicated above, acts constituting torture are offences under section 134 of the Criminal Justice Act as modified and extended to the Turks and Caicos Islands, and torture may constitute other serious offences as well. Torture contrary to section 134 or, for example, offences of wounding or causing grievous bodily harm contrary to section 10 of the Offences against Person Ordinance carry a maximum sentence of life imprisonment. Grave breaches of the Geneva Conventions carry with them a maximum penalty of 14 years' imprisonment unless the conduct involves killing, in which case the maximum penalty is life imprisonment.

19. Where it is not specifically made an offence by legislation (as, for example, is attempt to murder by section 6 of the Offences against the Person Ordinance), an attempt to commit any of the relevant offences would itself amount to an offence under the common law. A person convicted of an attempt to commit an offence would be liable

to a penalty no more severe than that to which he could be sentenced for the completed offence (see section 8(2) of the Criminal Law Ordinance). Similarly, any person who aids, abets, counsels or procures the commission of any offence, whether an offence at common law or by any enactment, may be tried, prosecuted and punished as a principal offender (section 5(5) of the Criminal Law Ordinance).

Article 5

20. The provisions of section 134 of the Criminal Justice Act 1988 as modified and extended to the Turks and Caicos Islands apply by their terms to acts of the proscribed kinds whether "in the Territory or elsewhere" and to a person falling within either subsection (1) or subsection (2) "whatever his nationality".

Article 6

21. Where a person who is present in the Turks and Caicos Islands is alleged to have committed torture, to have attempted to commit torture or to be guilty of complicity or participation in torture, the police, as the responsible authority in the Islands for the prevention and detection of crime, would, on the matter coming to their attention, carry out an investigation into the facts.

22. Where such a person is suspected of having committed one of the relevant offences, steps available under the ordinary criminal law of the Turks and Caicos Islands would be taken to bring him into custody or otherwise ensure his presence for such time as is necessary to enable criminal or extradition proceedings to be brought. In practice, given the seriousness of the offences, he is likely to be taken into custody.

23. No case falling within paragraph 3 or 4 of Article 6 has occurred in the Turks and Caicos Islands since the entry into force of the Convention for the Islands and no standing arrangement in relation to either paragraph has been thought to be necessary. If any such case were to occur, regard would be had to the requirements of the paragraph concerned.

Article 7

24. The long-standing practice of the relevant authorities in the Turks and Caicos Islands as regards the investigation of alleged criminal offences and the consideration of prosecution for such offences conforms to the requirements of this Article. The Constitution also contains, in its section 74, provisions requiring that a person charged with a criminal offence shall be afforded a fair hearing within a

reasonable time by an independent and impartial court established by law.

Article 8

25. Effect would be given to this Article under the extradition laws of the United Kingdom as applying in the Turks and Caicos Islands. Section 136 of the Criminal Justice Act 1988, the effect of which is preserved by section 38(4) of the Extradition Act 1989, ensures that in existing arrangements with a State also party to the Convention, a person is extraditable where the offence for which he is wanted is torture contrary to section 134 of the 1988 Act.

26. The Extradition (Torture) Order 1991 (annexed)[1/] makes provision for extradition from the Turks and Caicos Islands of persons accused of torture contrary to section 134 of the 1988 Act, and an attempt to commit such an offence in the case of States Parties to the Convention.

27. Section 22(6) of the Extradition Act 1989 and paragraph 15 of Schedule 1 to that Act re-enact section 136(2) of the Criminal Justice Act 1988, which provided that any act or omission, wherever committed, which constitutes torture and a corresponding offence against the law of any State with which an extradition treaty has been concluded shall be deemed to be an offence committed within the jurisdiction of that State.

Article 9

28. Assistance of the kind required by this Article could be provided in accordance with the applicable extradition laws and with the provisions of the Evidence (Proceedings in Other Jurisdictions) (Turks and Caicos Islands) Order 1987, made in exercise of powers conferred by section 10(3) of the Evidence (Proceedings in Other Jurisdictions) Act 1975 of the United Kingdom. In addition, in the case of the United States of America, arrangements for mutual assistance in criminal matters are given effect in the Turks and Caicos Islands by the Mutual Legal Assistance (United States of America) Ordinance 1990.

Article 10

29. The prohibition against torture is well understood by civil law enforcement personnel (the Islands have no military forces), medical personnel, public officials and others who may be involved in the custody, interrogation or treatment of an individual subjected to any form of arrest, detention or imprisonment. The training programmes for such persons include instruction on the need to treat everyone

1/ Document available for consultation at the Centre for Human Rights.

with humanity and respect and to act within the law at all times. Such persons may also be subject to disciplinary codes, as to which they would of course be instructed, containing relevant prohibitions. For example, it is a disciplinary offence under Rule 8(b) of the Police Disciplinary Code 1976 of the Turks and Caicos Islands for a police officer to use any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty.

Article 11

30. The interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, are reviewed as necessary in the circumstances of the Turks and Caicos Islands, where there has been no known instance of torture or any associated practice.

31. The "Judges' Rules" formerly in force in England and Wales are regarded by the courts as applying, as a matter of practice, in the Turks and Caicos Islands. These set out rules for the questioning of suspects by the police and for the cautioning of such suspects.

Article 12

32. The police are under a general duty to carry out, quickly and effectively, an impartial investigation of any alleged offence.

Article 13

33. The right of an individual who claims that he has been subjected to torture to complain, and to have his case promptly and impartially examined, as required by the first sentence of this Article, is secured by the general law of the Turks and Caicos Islands. Steps would also be taken, under the general law, to ensure protection of the complainant and witnesses.

34. There are also special provisions for the handling of complaints in particular cases. For example, the Turks and Caicos Islands Rules and Regulations for the administration of the prison provide for the redress of complaints by the Chief Prison Officer or, where no redress is given by him, for their reporting to the Prison Governor. The Rules and Regulations also state that "It is the duty of every officer to treat a prisoner with kindness and humanity and to listen patiently to and report his complaints and grievances...".

Article 14

35. Acts which constitute torture within the meaning of Article 1 of the Convention constitute civil wrongs for which remedies are available in civil proceedings for, notably, trespass to the person. In such proceedings compensation for the pain and suffering and any other damage caused would be available, including exemplary damages where appropriate. Such proceedings stem from the common law. Were a victim of torture to die as a result of his treatment, his dependants would be able to claim in respect of his death by virtue of the Fatal Accidents Ordinance 1970.

Article 15

36. Section 15 of the Evidence Ordinance provides that "A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement, threat, or promise having reference to the charge against the accused person proceeding from a person in authority" (emphasis supplied). It is in fact the general rule that admissions obtained as a result of torture or other oppressive means are inadmissible.

Article 16

37. As explained in Part I above, other international obligations which apply to the Turks and Caicos Islands - notably, those of Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention on Human Rights - already required the prevention of acts of the kind described in this Article. The Government of the Turks and Caicos Islands, which would view with grave concern any instance of unlawful ill-treatment committed by or at the instigation of or with the consent of a public officer or other person in an official capacity, has not considered that any change in existing law or practice there has been necessary for the fulfillment of those obligations, nor does it consider that any such change is necessary to meet the requirements of this Article.

38. Some instances of ill-treatment covered by this Article would amount to a criminal offence under the common law or be contrary to sections of the Offences against the Person Ordinance. The ill-treatment concerned could also provide a basis for civil proceedings.

ST HELENA

Part I: Information of general nature

1. The United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) on behalf of St Helena and its Dependencies (Ascension and Tristan da Cunha), among other territories, and the Convention took effect for them, pursuant to Article 27, on 7 January 1989.

2. The ratification by the United Kingdom of the International Covenant on Civil and Political Rights on 20 May 1976 also included St Helena and its Dependencies. Article 7 of that Covenant provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

3. The European Convention on Human Rights has been in force for St Helena and its Dependencies since 23 November 1953. Article 3 of that Convention provides that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

4. By successive declarations made since 12 September 1967 (currently declarations of 11 January 1991), the United Kingdom has accepted in respect of St Helena and its Dependencies the right of individual petition under Article 25 of the European Convention of Human Rights and the jurisdiction of the European Court of Human Rights under Article 46 of that Convention.

5. Under the Constitution, laws for St Helena are enacted by the Governor with the advice and consent of an elected Legislative Council. The Governor legislates for the Dependencies.

6. St Helena and its Dependencies have legal systems based on that of England and Wales. Local legislation is far from comprehensive and, in those circumstances, the English Law (Application) Ordinance 1987 provides for such relevant English law as was in force on 1 January 1987 to apply, subject to any necessary modification, where there are no local provisions. The position is similar in the two Dependencies.

7. Minor civil and criminal cases are dealt with by Lay Justices. The Administrators of Ascension and Tristan da Cunha are Magistrates by virtue of their offices. There is a non-resident Chief Justice who visits as and when

required in order to hear major civil and criminal cases. There is also a non-resident Court of Appeal, composed of three members, and provision for further appeal to the Judicial Committee of the Privy Council.

8. Section 134 of the Criminal Justice Act 1988 of the United Kingdom, which section came into force on 29 September 1988, made it an offence to torture a person in the circumstances there described. Sections 134 and 135 of that Act, modified as in Schedule 1 to the Criminal Justice Act 1988 (Torture)(Overseas Territories) Order 1988, was extended to St Helena and its Dependencies, and also to other territories, by that Order, which came into force on 7 January 1989. A copy of the Order is annexed to this report.

9. It is also an offence under section 1 of the Geneva Conventions Act 1957 of the United Kingdom to commit a grave breach of any of the four Geneva Conventions governing armed conflict. One such grave breach is torture of a protected person or the subjection of him to inhuman treatment. By virtue of the Geneva Conventions Act (Colonial Territories) Order in Council 1959, as amended, that Act extends, with specified exceptions, to St Helena and to other territories.

10. In addition, it has long been an offence in St Helena and its Dependencies, under the common law, to assault a person; and various forms of assault are made offences under the Offences against the Person Act 1861 as applied in St Helena by the English Law (Application) Ordinance 1987. Recourse to torture would, in some circumstances, involve the commission of assault or other, more serious, offences - for example, murder. An assault also gives rise to a breach of the civil law and can found a civil action. The conduct prohibited by the criminal or the civil law includes conduct which may fall short of torture but which may amount to cruel, inhuman or degrading treatment or punishment.

11. The law also ensures that a confession made by an accused person may not be given in evidence against him if it was obtained by oppression.

12. These matters are, as appropriate, dealt with more fully where they arise in Part II of this report.

Part II: Information in relation to the Articles in Part I of the Convention

13. Under the law in force in St Helena and its Dependencies, conduct constituting torture as defined in Article 1 of the Convention would involve a number of possible serious offences. It would be an offence under section 134 of the Criminal Justice Act as modified and

extended to the Islands. It might also involve the commission of murder or of some lesser, but still very serious, offence under the Offences against the Person Act 1861 as applied in St Helena by the English Law (Application) Ordinance 1987.

14. A grave breach of any of the Geneva Conventions amounting to torture is also a serious offence under the laws of St Helena.

15. Assaults on the person are also actionable under the civil law of the Islands.

16. Article 3 of the European Convention on Human Rights, which proscribes torture and other forms of ill-treatment, is among Articles from which it is not possible to derogate under Article 15 of that Convention.

17. No exceptional circumstances nor any superior orders may, under the laws in force in St Helena and its Dependencies, be invoked to justify torture.

Article 3

18. Under the laws in force in the Islands the authorities concerned would have a discretion not to expel, return or extradite a person to another State in a case where substantial grounds were advanced for believing that he would be in danger of being subjected to torture; and it is to be expected that the discretion would be exercised in accordance with the requirements of this Article.

Article 4

19. As indicated above, acts constituting torture are offences under section 134 of the Criminal Justice Act as modified and extended to St Helena and its Dependencies, and torture may constitute other serious offences as well. Torture contrary to section 134 carries a maximum sentence of life imprisonment. Grave breaches of the Geneva Conventions carry with them a maximum penalty of 14 years' imprisonment unless the conduct involves killing, in which case the maximum penalty is life imprisonment.

20. Attempts to commit torture, and acts of complicity or participation in torture, would also be subject to severe penalties under the criminal law in force in the Islands.

Article 5

21. The provisions of section 134 of the Criminal Justice Act as modified and extended to St Helena and its Dependencies apply by their terms to acts of the proscribed

kinds whether "in the Territory or elsewhere" and to a person falling within either subsection (1) or subsection (2) "whatever his nationality".

Article 6

22. Where a person who is present in one of the Islands is alleged to have attempted to commit torture or to be guilty of complicity or participation in torture, the police, as the responsible authority for the prevention and detection of crime, would, on the matter coming to their attention, investigate the facts.

23. Where such a person is suspected of having committed one of the relevant offences, steps available under the ordinary criminal law of the Islands would be taken to bring him into custody or otherwise ensure his presence for such time as is necessary to enable criminal or extradition proceedings to be brought.

24. No case falling within paragraph 3 or 4 of this Article has occurred in the Islands since the entry into force of the Convention for them and no standing arrangement in relation to either paragraph has been thought to be necessary. If any such case were to occur, regard would be had to the requirements of the paragraph concerned.

Article 7

25. The practice of the relevant authorities conforms to the requirements of this Article.

Article 8

26. Effect would be given to this Article under the extradition laws of the United Kingdom as applying in the Islands. Section 136 of the Criminal Justice Act 1988, the effect of which is preserved by section 38(4) of the Extradition Act 1989, ensures that in existing arrangements with a State also party to the Convention, a person is extraditable where the offence for which he is wanted is torture contrary to section 134 of the 1988 Act.

27. The Extradition (Torture) Order 1991 (annexed)[1/] makes provision for extradition from St Helena and its Dependencies of persons accused of torture contrary to Section 134 of the 1988 Act, and an attempt to commit such an offence in the case of States Parties to the Convention.

28. Section 22(6) of the Extradition Act 1989 and paragraph 15 of Schedule 1 to that Act re-enact section 136(2) of the Criminal Justice Act 1988, which provided that any act or omission, wherever committed, which constitutes

1/ Document available for consultation at the Centre for Human Rights.

torture and a corresponding offence against the law of any State with which an extradition treaty has been concluded shall be deemed to be an offence committed within the jurisdiction of that State.

Article 9

29. Assistance of the kind required by this Article could, in extradition cases, be provided in accordance with applicable extradition laws.

Article 10

30. St Helena has a well-trained police force which also takes responsibility for the single prison. A significant number of officers receives training in the United Kingdom. An officer holding the rank of Inspector is in charge of local training. No officer is confirmed in his appointment until he has successfully completed a recognised training course.

Article 11

31. The provisions of the Police and Criminal Evidence Act 1984 of the United Kingdom are applied in St Helena unless any local provision is more favourable to the accused. The relevant rules, instructions, methods, practices and arrangements are reviewed as necessary in the circumstances of the Islands, where there has been no known instance of torture or any associated practice.

Article 12

32. Any suspected instance of torture would be promptly and thoroughly investigated by the police. Under section 14 of the Constitution, the Attorney General, who is resident in St Helena, has ultimate responsibility for the bringing of criminal prosecutions.

Article 13

33. The right of an individual who claims that he has been subjected to torture to complain, and to have his case promptly and impartially examined, is secured by the general law of the Islands. Steps would also be taken, under the general law, to ensure protection of the complainant and witnesses.

Article 14

34. Acts which constitute torture within the meaning of Article 1 of the Convention constitute civil wrongs for which remedies are available in civil proceedings for,

notably, trespass to the person. In such proceedings compensation for the pain and suffering and any other damage caused would be available, including exemplary damages where appropriate. Were a victim of torture to die as a result of his treatment, his dependants would be able to claim in respect of his death.

35. A person wishing to initiate civil proceedings to obtain redress for such a wrong would have a right to free advice and assistance from the Legal and Lands Department of the Government of St Helena or one of the formally recognised Lay Advocates. The Legal Assistance Fund, established by the Lay Advocates and Legal Assistance Ordinance 1986, may in appropriate cases be used to pay for advice from a United Kingdom lawyer.

Article 15

36. Under the Police and Criminal Evidence Act 1984 as applied in St Helena, a confession by an accused person is inadmissible in criminal proceedings where it appears to the Court that the confession was or may have been obtained by oppression (and for these purposes oppression is defined in section 76(8) of that act as including "torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture)"). It is in fact the general rule under the common law that statements obtained as a result of torture or other oppressive means are inadmissible in evidence.

Article 16

37. As explained in Part I above, other international obligations which apply to St Helena and its Dependencies - in particular, those of Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention on Human Rights - already required the prevention of acts of the kind described in this Article. The Government of St Helena, which would view with grave concern any instance of unlawful ill-treatment committed by or at the instigation of or with the consent of a public officer or other person in an official capacity, has not considered that any change in existing law or practice there was necessary for the fulfilment of those obligations, nor does it consider that any such change is necessary to meet the requirements of this Article.

38. Some instances of ill-treatment covered by this Article would amount to a criminal offence under the common law or be contrary to the Offences against the Person Act 1861 as applied in St Helena. The ill-treatment concerned could also provide a basis for civil proceedings.

PITCAIRN

Part I: Information of general nature

1. The United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) on behalf of Pitcairn, among other territories, and the Convention took effect for Pitcairn, pursuant to Article 27, on 7 January 1989.

2. The ratification by the United Kingdom of the International Covenant on Civil and Political Rights on 20 May 1976 also included Pitcairn. Article 7 of that Covenant provides that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

3. Pitcairn is a small volcanic island in the South Pacific, the only permanently inhabited island of the four which form the Pitcairn Islands Group (the other three are Henderson, Oeno and Ducie). Its normal population is about 50.

4. The main constitutional instrument under which the Islands are administered is the Pitcairn Order 1970. Under that Order, the principal authority for the administration of the Islands is vested in the Governor, who is empowered to make local laws "for the peace, order and good government of the Islands". Power is, however, retained for Her Majesty acting through a Secretary of State to disallow any law so made. Among other restrictions is that contained in paragraph 5(5) of the Pitcairn Royal Instructions 1970, which provides that the Governor may not, without having previously obtained instructions through a Secretary of State, make any law "the provisions of which shall appear to him to be inconsistent with obligations imposed upon {the Government of the United Kingdom} by Treaty".

5. Local affairs are run by an Island Council consisting of the Island Magistrate and nine members. The Council has authority to enact rules in the nature of by-laws which must be notified to the Governor, who has the power of revocation or alteration.

6. There are three levels of courts - the Supreme Court, which is the Superior Court of Judicature for the Islands; a Subordinate Court which exercises criminal and civil jurisdiction at a lower level; and the Island Court, consisting of the Island Magistrate sitting with two assessors, to exercise local jurisdiction at primary level.

7. The way of life in Pitcairn is such that in practice there is currently no problem of serious crime or disorder requiring judicial intervention and the (single) office of police officer is largely a sinecure.

8. Section 134 of the Criminal Justice Act 1988 of the United Kingdom, which section came into force on 29 September 1988, made it an offence to torture a person in the circumstances there described. Sections 134 and 135 of that Act, modified as in Schedule 1 to the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988, was extended to the Pitcairn Group of Islands and to other territories by that Order, which came into force on
/ 7 January 1989. A copy of the Order is annexed to this report.

9. It is also an offence under section 1 of the Geneva Conventions Act 1957 of the United Kingdom to commit a grave breach of any of the four Geneva Conventions governing armed conflict. One such grave breach is torture of a protected person or the subjection of him to inhuman treatment. By virtue of the Geneva Conventions Act (Colonial Territories) Order in Council 1959, as amended, that Act extends, with specified exceptions, to the Pitcairn Group of Islands and to other territories.

10. In addition, it has long been an offence in Pitcairn, under the common law, to assault a person; and a local offence of assault is established by the Justice Ordinance. Recourse to torture would, in some circumstances, involve the commission of an assault or another, more serious, offence - for example, murder. An assault also gives rise to a breach of the civil law and can found a civil action. The conduct prohibited by the criminal or the civil law includes conduct which may fall short of torture but which may amount to cruel, inhuman or degrading treatment or punishment.

11. The law also ensures that a confession made by an accused person may not be given in evidence against him if it was obtained by oppression.

12. These matters are, as appropriate, dealt with more fully where they arise in Part II of this report.

Part II: Information in relation to the Articles in Part I of the Convention

Article 2

13. Under the law in force in Pitcairn, conduct constituting torture as defined in Article 1 of the Convention would involve a number of possible serious offences. It would be

an offence under section 134 of the Criminal Justice Act as modified and extended to the Pitcairn Group of Islands. It might also constitute the offence of murder or some lesser offence such as assault causing grievous bodily harm, assault causing actual bodily harm or aggravated assault.

14. A grave breach of any of the Geneva Conventions amounting to torture is also a serious offence under the law of Pitcairn.

15. Assaults on the person are also actionable under the civil law of Pitcairn.

16. No exceptional circumstances nor any superior orders may, under the law in force in Pitcairn, be invoked to justify torture.

Article 3

17. Under the laws in force in Pitcairn the authorities concerned would have a discretion not to expel, return or extradite a person to another State in a case where substantial grounds were advanced for believing that he would be in danger of being subjected to torture; and it is to be expected that the discretion would be exercised in accordance with the requirements of this Article.

Article 4

18. As indicated above, acts constituting torture are offences under section 134 of the Criminal Justice Act as modified and extended to Pitcairn, and torture may constitute other serious offences as well. Torture contrary to section 134 carries a maximum sentence of life imprisonment. Grave breaches of the Geneva Conventions carry with them a maximum penalty of 14 years' imprisonment unless the conduct involves killing, in which case the maximum penalty is life imprisonment.

19. Attempts to commit torture, and acts of complicity or participation in torture, would also be subject to severe penalties under the criminal law in force in Pitcairn.

Article 5

20. The provisions of section 134 of the Criminal Justice Act as modified and extended to Pitcairn apply by their terms to acts of the proscribed kinds whether "in the Territory or elsewhere" and to a person falling within either subsection (1) or subsection (2) "whatever his nationality".

Article 6

21. Where a person who is present in one of the Islands is alleged to have attempted to commit torture or to be guilty of complicity or participation in torture, the police officer, as the responsible authority in Pitcairn for the prevention and detection of crime, would, on the matter coming to his attention, investigate the facts.

22. Where such a person is suspected of having committed one of the relevant offences, steps available under the ordinary criminal law of Pitcairn would be taken to bring him into custody or otherwise ensure his presence for such time as is necessary to enable criminal or extradition proceedings to be brought.

23. No case falling within paragraph 3 or 4 of this Article has occurred in the Islands since the entry into force of the Convention for them and no standing arrangement in relation to either paragraph has been thought to be necessary. If any such case were to occur, regard would be had to the requirements of the paragraph concerned.

Article 7

24. The practice of the relevant authorities conforms to the requirements of this Article.

Article 8

25. Effect would be given to this Article under the extradition laws of the United Kingdom as applying in Pitcairn. Section 136 of the Criminal Justice Act 1988, the effect of which is preserved by section 38(4) of the Extradition Act 1989, ensures that in existing arrangements with a State also party to the Convention, a person is extraditable where the offence for which he is wanted is torture contrary to section 134 of the 1988 Act.

26. The Extradition (Torture) Order 1991 (annexed)[1/] makes provision for extradition from Pitcairn of persons accused of torture contrary to Section 134 of the 1988 Act, and an attempt to commit such an offence in the case of States Parties to the Convention.

27. Section 22(6) of the Extradition Act 1989 and paragraph 15 of Schedule 1 to that Act re-enact section 136(2) of the Criminal Justice Act 1988, which provided that any act or omission, wherever committed, which constitutes torture and a corresponding offence against the law of any State with which an extradition treaty has been concluded, shall be deemed to be an offence committed within the jurisdiction of that State.

1/ Document available for consultation at the Centre for Human Rights.

Article 9

28. Assistance of the kind required by this Article could, in extradition cases, be provided in accordance with applicable extradition laws.

Article 10

29. The rights and freedoms enshrined in the International Covenant on Civil and Political Rights, including the right under Article 7 not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, are adequately publicised in all educational and training programmes at an appropriate level in the circumstances obtaining in Pitcairn.

Article 11

30. The interrogation of suspected persons and persons held in custody is strictly regulated by the "Judges' Rules" and the arrangements for the detention of prisoners are appropriately safeguarded against the possibility of torture or similar treatment. The relevant rules, instructions, methods, practices and arrangements are reviewed as necessary in the circumstances of Pitcairn, where there has been no known instance of torture or any associated practice.

Article 12

31. Any suspected instance of torture would be promptly and thoroughly investigated by the police officer and, as appropriate, the Island Magistrate.

Article 13

32. The right of an individual who claims that he has been subjected to torture to complain, and to have his case promptly and impartially examined, is secured by the general law of Pitcairn. Steps would also be taken, under the general law, to ensure protection of the complainant and witnesses.

Article 14

33. Acts which constitute torture within the meaning of Article 1 of the Convention constitute civil wrongs for which remedies are available in civil proceedings for, notably, trespass to the person. In such proceedings compensation for the pain and suffering and any other damage caused would be available, including exemplary damages where appropriate. Such proceedings stem from the common law. Were a victim of torture to die as a result of his

treatment, his dependants would be able to claim in respect of his death.

Article 15

34. By virtue of the "Judges' Rules" and the common law, no statement established as having been made as a result of torture or other form of coercion would be admissible in evidence in any proceedings except the trial of a person accused of having committed such torture or other coercion.

Article 16

35. As explained above, other international obligations which apply to the Pitcairn Group of Islands - notably, those of Article 7 of the International Covenant on Civil and Political Rights - already required the prevention of acts of the kind described in this Article. Any instance of unlawful ill-treatment committed by or at the instigation of or with the consent of a public officer or other person in an official capacity in Pitcairn would be viewed by the authorities with grave concern; and it has not been considered that any change in existing law or practice there has been necessary for the fulfilment of those obligations, nor is it considered that any such change is necessary to meet the requirements of this Article.

36. Some instances of ill-treatment covered by this Article would amount to a criminal offence under the common law or be contrary to other legal provisions in force in Pitcairn. The ill-treatment concerned could also provide a basis for civil proceedings.

CAYMAN ISLANDS

Part I: Information of general nature

1. The United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on behalf of the Cayman Islands, among other territories, and the Convention took effect for the Islands, pursuant to Article 27, on 7 January 1989. The ratification by the United Kingdom of the International Covenant on Civil and Political Rights also included the Cayman Islands. In addition, the European Convention on Human Rights has been in force for the Cayman Islands since 14 September 1964.

2. The Constitution of the Cayman Islands is contained in the Schedule to the Cayman Islands (Constitution) Order 1972 (S.I.1972 No 1101) made by Order in Council pursuant to section 5 of the West Indies Act 1962, (1962 c.19) as subsequently amended by S.I.1984 No 126 and S.I.1987 No 2199.

3. This Order provides for establishment of the offices of Governor, Executive Council and the Legislative Assembly. It does not make detailed provision for the Judiciary, which is regulated primarily by local legislation and operates wholly independently of the Executive and Legislature. By virtue of section 6 of the Grand Court Law 1975 Judges may be removed from office only for inability to discharge the functions of their office or for misbehaviour and only in accordance with directions given by the Secretary of State of Her Majesty's Government.

4. The powers and duties of each can be outlined as follows:

(a) Governor - the Governor is the representative of the Crown and presides at meetings of the Executive Council. He is obliged to consult with Council, except in the case of certain reserved matters, including defence, external affairs, internal security, the police and the appointment and terms of employment of civil servants. In any case where he is obliged to consult with Executive Council, the Governor must act in accordance with the advice given, unless he considers it inexpedient in the interests of public order, public faith or good Government to do so (and in such cases he must act with the approval of the Secretary of State, unless the matter is urgent). The Governor is not obliged to consult the Executive Council in any case in

which he considers that Her Majesty's Service would sustain material prejudice or the matter is too unimportant or urgent.

(b) Executive Council - the Executive Council advises the Governor on the administration of the Islands. It is composed of four elected Members (elected from the representatives in the Legislative Assembly), each with a range of executive responsibilities allocated by the Governor; and three official Members (the Financial Secretary, the Attorney General and the Administrative Secretary).

(c) Legislative Assembly - there are twelve elected representatives in the Legislative Assembly, who represent the six electoral districts in the Islands. Elections are held every four years on a secret ballot by adult franchise (18 and over). In addition, the three official Members of the Executive Council also serve as members of the Assembly. The Assembly's powers are to advise on and consent to laws "for the peace, order and good government" of the Islands: in effect, and subject to what follows, it makes the law. Any member may introduce a Bill into the Legislative Assembly. Bills cannot become law without the assent of the Governor and he, in accordance with the Cayman Islands Royal Instructions 1972, cannot (except in cases of urgent necessity) assent to any Bill "the provisions of which appear to him to be inconsistent with obligations imposed by treaty" without the prior instructions of Her Majesty through a Secretary of State. Any law assented to by the Governor may be disallowed by Her Majesty acting through a Secretary of State. The Speaker of the House presides at the Legislative Assembly and has a casting vote (but not an original vote).

(d) The Judicial System - there are three levels of Court: the Summary Court, the Grand Court and the Cayman Islands Court of Appeal. The Summary Court is presided over by one of two Magistrates. It deals with civil disputes up to CI$2000 and all but the most serious criminal offences. The Juvenile Court, which is also a Court of Summary Jurisdiction, generally sits with three Justices, one of whom must be a woman. Appeals from the Summary Court lie to the Grand Court, which is presided over by the Chief Justice or by one of two Puisne Judges. The Grand Court has both civil and criminal jurisdiction and administers the common law and law of equity of England, as well as locally enacted laws and applied laws. The Cayman Islands Court of Appeal was established by an amendment to the Constitution Order in 1984 (S.I.No 126), before which appeals were heard by the Jamaican Court of Appeal. It sits when required to hear appeals from the Grand Court and at present is presided over by the Chief Justice of Jamaica.

Appeals from the Cayman Islands Court of Appeal lie to the Judicial Committee of the Privy Council.

5. The Cayman Islands have a police service, the Royal Cayman Islands Police Force, and a uniformed Prison service. The Police are, under the Constitution, the special responsibility of the Governor. The Cayman Islands do not have an army or other military force.

6. There are no fundamental rights and freedoms embodied in the Constitution Order. Instead there is an unwritten constitutional right to freedom as in the United Kingdom. The basic norm in the Cayman Islands is one of general freedom with any limitation or restriction thereon having to be specifically authorised by law. A new constitution which will include provisions for the protection of fundamental rights and freedom is currently being drafted.

7. In the Cayman Islands, international treaty law is not automatically part of the domestic law. The provisions of a Treaty must be given effect by domestic legislation or United Kingdom legislation extended by Order in Her Majesty's Privy Council to the Cayman Islands.

8. Section 134 of the United Kingdom Criminal Justice Act 1988 makes it an offence to torture persons in the circumstances there described. This section, together with section 135, was extended to the Cayman Islands by Order in Council made pursuant to section 138 of the Act: see the Criminal Justice Act (Torture) (Overseas Territories) Order 1988, S.I. 1988 No 2242, which came into force on 7 January 1989. A copy is annexed to this report.

9. In addition, an act of torture is likely to constitute one of the offences against the person contained in Part VI of the Penal Code and the various penalties outlined in Part VI of the Penal Code would be applicable.

10. The Common Law of England which applies to the Cayman Islands, unless modified by statute, also ensures that a confession made by an accused person may not be given in evidence against him if it was obtained by oppression.

11. The use of force by police agencies in the Cayman Islands is regulated by the Common Law of England and by the Cayman Islands Police Law and Regulations made thereunder. The Prison service is regulated by the Prisons Law and Regulations. In addition any member of the Royal Cayman Islands Police Force or the Prison service who does not respect the fundamental rights of others or who abuses his authority in the performance of his duties may be liable to criminal prosecution under the Penal Code or to disciplinary proceedings which may result in his dismissal.

12. As regards the civil rights of complainants in torture cases, civil proceedings for compensatory damages would be available to the victim.

13. It is also an offence under section 1 of the Geneva Conventions Act 1957 (as Extended to the Cayman Islands by the Geneva Conventions Act (Colonial Territories) Order 1959, S.I. 1959 No 1301, as amended by S.,I. 1962 No 1084, to commit a grave breach of any of the four Geneva Conventions governing armed conflict. One such grave breach is torturing a protected person or the subjection of him to inhuman treatment.

Part II: Information in relation to the Articles in Part I of the Convention

14. As previously indicated the remedies in Tort and other civil proceedings are open to persons claiming to be victims of conduct which amount to torture in the Cayman Islands and in addition, the offences stipulated in Part VI of the Penal Code apply.

Article 2

15. By virtue of the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988, (S.I. 1988 No 2242) section 134 of the Criminal Justice Act 1988 as modified, was extended to the Cayman Islands. Acts or omissions constituting torture are made criminal offences by section 134.

Article 3

16. Extradition from the Cayman Islands is governed by the United Kingdom Extradition Act 1870, and in the case of Commonwealth Countries by the Fugitive Offenders Act 1967 as extended by the Fugitive Offenders (Cayman Islands) Order 1968 (S.I. 1968 No 112). Under section 4 of the Fugitive Offenders Act a person shall not be returned if it appears to the Governor, to the court of Committal or to the Grand Court on an application for habeas corpus -

(a) that the offence of which that person is accused or was convicted is an offence of a political character;
(b) that the request for his return (though purporting to be made on account of a relevant offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
(c) that he might, if returned, be prejudiced at his trial or punished, detained or restrained in his

personal liberty by reason of his race, religion, nationality or political opinions.

There is also the general discretion to set aside an order for return under section 8 of the Fugitive Offenders Act whereby the Grand Court may discharge a person committed in custody if it appears to the court, in relation to the offence in respect of which the fugitive's return is sought, that:

(i) by reason of its trivial nature; or
(ii) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large as the case may be; or
(iii) because the accusation against him is not made in good faith in the interests of justice, it would, having regard to all the circumstances, be unjust or oppressive to return him. The Governor is similarly obliged not to make an order for return of any person if it appears to him that it would be unjust or oppressive to do so on these grounds.

17. Under the Extradition Act 1870 a fugitive shall not be returned if the offence in respect of which his surrender is sought is one of a political character, or if he can demonstrate that the requisition for his surrender has in fact been made with a view to try to punish him for such an offence. Although the other safeguards set out in the Fugitive Offenders Act are not expressly contained in the Extradition Act, the Governor retains a discretion not to return a person committed for extradition, and would not do so if he was of the opinion that such return would be unjust or oppressive. International obligations, including those in Article 3, would be taken into account in exercising this discretion.

Article 4

18. As indicated above, acts or omissions constituting torture are offences under section 134 of the Criminal Justice Act 1988 as extended and are punishable by life imprisonment. In addition an act of torture may involve the commission of murder or of an offence under Part VI of the Penal Code: e.g. Causing grievous bodily harm (S.190), assault causing actual bodily harm (S.202), wounding (S.194) or common assault (S.201). In the Cayman Islands by virtue of Section 289 of the Penal Code any attempt to commit any crime is in itself a criminal offence for which the penalty is 3 years imprisonment, or such other penalty as may be specified. In the case of attempted murder the penalty is life imprisonment.

19. Conspiracy to commit an offence is an offence in the Cayman Islands. In relation to conspiracy to murder a maximum punishment of 14 years imprisonment may be imposed. In the case of a conspiracy to commit other offences, including offences against the person, the maximum sentences is 7 years imprisonment. A person who aids, abets, counsels or procures the commission of any offence is, by virtue of section 18 of the Penal Code, liable to be charged, tried and punished as a principal offender.

Article 5

20. Under Section 134 of the 1988 Act the offence of torture is committed where the conduct taken place in the Cayman Islands or elsewhere. The nationality of the victim is immaterial in relation to the offence. In the case of murder and other offences in Part VI of the Penal Code the usual rules of jurisdiction apply, so that a Cayman Islands Court has Jurisdiction in respect of an offence if it is committed in the Cayman Islands.

Article 6

21. Having regard to the existence of the criminal offences and the rules as to jurisdiction described above, where a person is present in the Cayman Islands, such steps as are available under the ordinary criminal Law would be taken to take him into custody or to ensure his presence as necessary.

22. In the Cayman Islands the power to arrest a person reasonably suspected of an arrestable offence, that is to say an offence defined as such in the Criminal Procedure Code or an offence for which a person is liable to be imprisoned on conviction for 6 years or more is conferred by section 24(4) and section 33 of the Police Law. A copy of these sections are annexed hereto. Having been charged and been brought before a Court, the question whether a person should be remanded in custody or released on bail would be for the Court to decide. The Court would be entitled to refuse bail if, inter alia, it thought that the accused would fail to surrender to custody.

Section 34 of the Police Law makes provision for detention of a person in police custody. A suspect also has a general right to consult with an attorney and to have someone nominated by him advised without delay of his arrest. There is no specific provision for a foreign national to communicate with a representative of the State of which he is a national, or for a stateless person to communicate with 'the representative of the state where he usually resides', but in practice access is afforded to consular

representatives (if there is one) in the Islands and steps are taken to notify the authorities of the relevant State through the appropriate channels.

Article 7

23. A combination of statute law and common law, ensure that all accused, irrespective of the charge they face, are to be treated fairly at all stages whilst in police custody before charge, on being charged, pending and during the course of the trial and whilst serving any sentence of imprisonment imposed by the trial court. A person arrested for an offence not of a serious nature must be brought before a court within 24 hours after he has been taken into custody or the person should be released on bail to appear before a court (Section 34(2) Police Law). In matters of a serious nature the accused person must be brought before a court within a reasonable time.

Article 8

24. Sections 136 and 137 of the Criminal Justice Act, 1988 have amended the schedule to the Extradition Act 1870 as read with the Fugitive Offenders Act, 1967 (U.K.) which govern extradition arrangements with the Cayman Islands, to accommodate torture as a separate extraditable offence. Where a person's conduct amounts to murder or one of the offences under Part VI of the Penal Code referred to above, he would be extraditable under the Cayman Islands' existing extradition arrangements.

The Extradition (Torture) Order 1991 (annexed)[1/] makes provision for extradition from Anguilla of persons accused of torture contrary to Section 134 of the 1988 Act, and an attempt to commit such an offence in the case of States Parties to the Convention.

Article 9

25. By virtue of Section 24 of the Extradition Act 1870, section 5 of the Extradition Act 1873 and Section 5 of the Evidence (Proceedings in Other Jurisdictions) Act 1975, as extended to the Cayman Islands by the Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order 1978, (S.I. 1978 No 1890), it is possible for evidence to be taken in the Cayman Islands courts for use in criminal proceedings underway in overseas courts. In addition, in cases involving the United States of America, evidence may be taken in the Cayman Islands, and other investigatory assistance offered, for the investigation, prosecution and supression of criminal offices: see the Mutual Legal Assistance (United States of America) Law 1986.

1/ Document available for consultation at the Centre for Human Rights.

Article 10

26. All training programmes for law enforcement personnel and other persons involved in the custody, questioning or treatment of any individual subject to any form of arrest, detention or imprisonment emphasise the need to treat everyone as an individual and with humanity and respect, and to act within the law at all times.

27. In the absence of previous identified instances of torture in the Cayman Islands, no formal training is afforded health care professionals in the identification or signs of torture or in terms of its specific relationship to rehabilitative needs of victims. Nonetheless all health care professionals in particular doctors and nurses are adequately equipped through their training and education, quickly to recognise any abnormal physical signs of abuse.

28. In respect of the Police it is an offence against discipline if any officer "offers or uses any unwarrantable personal violence or ill-treats any person in custody:" see the Police Regulations 1976, reg 6(1). Breach of this provision would result in disciplinary proceedings against the officer concerned, and could lead to his dismissal from the force under the procedures set out in section 51 of the Police Law. In addition Police Standing Orders (Standing Order (8)) require officers to ensure that prisoners are "treated with courtesy and consideration" and are permitted to exercise their rights.

29. In respect of the Prison Service the Prison (Discipline for Officers) Regulations, 1984, provide that it is an offence against discipline if an officer is guilty of:

"(k) unlawful or unnecessary exercise of authority, that is to say if he -

(i) deliberately acts in a manner calculated to provoke a prisoner to commit an offence against discipline; or
(ii) in dealing with a prisoner uses force unnecessarily or where application of force to a prisoner is necessary uses undue force."

Such an offence against discipline may lead to dismissal.

30. The Prisons Law also provides for the access of prisoners to lawyers, visits, medical attention, and for monthly inspection of the Prison by two or more persons selected from a panel comprised of Justices of the Peace, Magistrates and other suitable persons: see section 42 of the Prisons Law, as amended.

Article 11

31. The Police and Prison Service do keep their regulations, rules and Standing Orders under review. In addition, as pointed out in paragraph 38 below, improper interrogation will lead to the rejection, by the courts, of any admissions obtained by it.

Article 12

32. It is generally the duty of the police to investigate impartially any alleged offence quickly and effectively. Anyone who alleges he has been the subject of torture may go to the police with his complaint. In the case of allgations against the police there are provisions for independent internal investigation of such complaints. In an appropriate case the Attorney General or His Excellency The Governor (who is responsible for police matters) could order an independent outside investigation.

33. In the case of the Prison, complaints could be made to the Prison Director or to the independent visitors referred to in paragraph 31 above. Prisoners have access to the courts and to legal advice for the purpose of bringing civil proceedings. In the case of a criminal allegation against a prison officer the police would investigate as they would for any other case, and report to the Attorney General who would decide whether or not to prosecute.

Article 13

34. All necessary steps would be taken to ensure that no-one received any ill-treatment or intimidation as a consequence of a complaint alleging torture or other mistreatment.

Article 14

35. By virtue of section 28 of the Penal Code the Courts of the Cayman Islands have the power to order a convicted offender to pay compensation to any person injured by any criminal act. Any such compensation may be in addition to or in substitution for any other punishment.

36. In addition to the power of a Court to award compensation on conviction of the offender, a victim of torture may maintain a civil action before the courts for damages for the wrong done to him (and these may include exemplary damages where the injury was inflicted by a public officer) would survive for the benefit of the estate of a deceased person: see section 2 of the Estates Proceedings Law, 1974. In addition, the dependents of a deceased victim

could maintain an action in their own right for the loss suffered by them: see sections 3 and 4 of the Law of Tort Reform Law.

Article 15

37. It is a fundamental condition of the admissibility of any admission or confession against the person making it that it should have been voluntary, in the sense that it had not been obtained from him by fear of prejudice, or hope of advantage, exercised or held out by any person in authority, or by oppression. "Oppression" includes the use of force, or the threat of force. Where it is represented that a confession was or may have been so obtained, the Court will not allow the confession to be used unless it is established by the prosecution, beyond reasonable doubt, that it was not obtained by such means. The court can of its own motion require the prosecution to prove, to that standard, that a confession was not obtained by oppression.

38. In addition the English 'Judges Rules' apply in the Cayman Islands (Evidence Law, section 19). These set out rules for the questioning of suspects by the police, and for the cautioning of such suspects. Answers may be inadmissible in evidence at the subsequent trial of that suspect if these rules are disobeyed.

Article 16

39. The Cayman Islands comply with the provisions of this article by virtue of Part VI of the Penal Code. Reference is also made to the provisions outlined in respect of Articles 10, 11, 12 and 13 above. The Cayman Islands do not retain judicial corporal punishment among the penalties that may be awarded upon conviction of a criminal offence. However, the Summary Court does have power to impose corporal punishment upon a convicted prisoner for a breach of prison discipline: see the Prisons Law (Law 14 of 1975), Section 40. This power has not been exercised in recent years and is effectively in abeyance.

BRITISH VIRGIN ISLANDS

Part I: Information of general nature

1. The United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) on behalf of the British Virgin Islands, among other territories, and the Convention took effect for the Islands, pursuant to Article 27, on 7 January 1989.

2. The ratification by the United Kingdom of the International Covenant on Civil and Political Rights on 20 May 1976 also included the British Virgin Islands. Article 7 of that Covenant provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

3. The European Convention on Human Rights has been in force for the British Virgin Islands since 23 November 1953. Article 3 of that Convention provides that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

4. The Constitution of the British Virgin Islands is contained in the Virgin Islands (Constitution) Order 1976, as amended. That Order came into operation on 1 June 1977.

5. Section 134 of the Criminal Justice Act 1988 of the United Kingdom, which section came into force on 29 September 1988, made it an offcence to torture a person in the circumstances there described. Sections 134 and 135 of that Act, modified as in Schedule 1 to the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988, was extended to the British Virgin Islands and to other territories by that Order, which came into force on 7 January 1989. A copy of the Order is annexed to this report.

6. It is also an offence under section 1 of the Geneva Conventions Act 1957 of the United Kingdom to commit a grave breach of any of the four Geneva Conventions governing armed conflict. One such grave breach is torture of a protected person or the subjection of him to inhuman treatment. By Order in Council 1959, as amended, that Act extends, with specified exceptions, to the British Virgin Islands and other territories.

7. In addition, it has long been an offence in the British Virgin Islands, under the common law, to assault, a person; and various forms of assault are made offences under the Offences against the Person Ordinance. Recourse to torture would, in some circumstances, involve the commission of assault or other, more serious, offences - for example, murder. An assault also gives rise to a breach of the civil law and can found a civil action. The conduct prohibited by the criminal or the civil law includes conduct which may fall short of torture but which may amount to cruel, inhuman or degrading treatment or punishment.

8. The law also ensures that a confession made by an accused person may not be given in evidence against him if it was obtained by oppression.

9. These matters are, as appropriate, dealt with more fully where they arise in Part II of this report.

Part II: Information in relation to the Articles in Part I of the Convention

Article 2

10. Under the law in force in the British Virgin Islands, conduct constituting torture as defined in Article 1 of the Convention would involve a number of possible serious offences. It would be an offence under section 134 of the Criminal Justice Act as modified and extended to the Islands. It might also involve the commission of murder or some lesser offence under the Offences against the Person Ordinance - for example, unlawfully and maliciously wounding, or inflicting any grievous bodily harm, contrary to section 19 of the Ordinance, or unlawfully and maliciously administering any poison or other destructive or noxious thing, contrary to section 22 or 23.

11. A grave breach of any of the Geneva Conventions amounting to torture is also a serious offence under the law of the British Virgin Islands.

12. Assaults on the person are also actionable under the civil law of the Islands.

13. Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention on Human Rights, both of which apply to the British Virgin Islands and which proscribe torture and other forms of ill-treatment, are among Articles from which it is not permissible to derogate under the provisions of either instrument which are concerned with derogation (Article 4 of the Covenant and Article 15 of the Convention).

14. No exceptional circumstances nor any superior orders may, under the law in force in the British Virgin Islands, be invoked to justify torture.

Article 3

15. Under the extradition laws of the United Kingdom as extended to the British Virgin Islands and other relevant legislation applying there (for example, the Immigration and Passport Ordinance 1977) the authorities concerned would have a disretion not to expel, return or extradite a person to another State in a case where substantial grounds were advanced for believing that he would be in danger of being subjected to torture; and it is to be expected that the discretion would be exercised in accordance with the requirements of this Article.

Article 4

16. As indicated above, acts constituting torture are offences under section 134 of the Criminal Justice Act as modified and extended to the British Virgin Islands, and torture may constitute other serious offences as well. Grave breaches of the Geneva Conventions carry with them a maximum penalty of 14 years' imprisonment unless the conduct involves killing, in which case the maximum penalty is life imprisonment.

17. Where it is not specifically made an offence by legislation (as, for example, is attempt to murder by section 14 of the Offences against the Person Ordinance), an attempt to commit any of the relevant offences would itself amount to an offence under the common law. A person convicted of an attempt to commit an offence would be liable to a penalty no more severe than that to which he could be sentenced for the completed offence. Similarly, any person who becomes an accessory before the fact to any felony or who counsels, procures or causes any other person to commit any felony may be tried, prosecuted and punished as a principal offender (sections 2 and 3 of the Accessories and Abettors Act).

Article 5

18. The provisions of section 134 of the Criminal Justice Act 1988 as modified and extended to the British Virgin Islands apply by their terms to acts of the proscribed kinds whether "in the Territory or elsewhere" and to a person falling within either subsection (1) or subsection (2) "whatever his nationality".

Article 6

19. Where a person who is present in the British Virgin Islands is alleged to have committed torture, to have attempted to commit torture or to be guilty of complicity or participation in torture, the police, as the responsible authority in the Islands for the prevention and detection of crime, would, on the matter coming to their attention, carry out an investigation into the facts.

20. Where such a person is suspected of having committed one of the relevant offences, steps available under the ordinary criminal law of the Islands would be taken to bring him into custody or otherwise ensure his presence for such time as is necessary to enable criminal or extradition proceedings to be brought. In practice, given the seriousness of the offences, he is likely to be taken into custody.

21. No case falling within paragraph 3 or 4 of Article 6 has occurred in the British Virgin Islands since the entry into force of the Convention for the Islands and no standing arrangement in relation to either paragraph has been thought to be necessary. If any such case were to occur, regard would be had to the requirements of the paragraph concerned.

Article 7

22. The long-standing practice of the relevant authorities in the British Virgin Islands as regards the investigation of alleged criminal offences and the consideration of prosecution for such offences conforms to the requirements of this Article.

Article 8

23. Effect would be given to this Article under the extradition laws of the United Kingdom as applying in the British Virgin Islands. Section 136 of the Criminal Justice Act 1988, the effect of which is preserved by section 38(4) of the Extradition Act 1989, ensures that in existing arrangements with a State also party to the Convention, a person is extraditable where the offence for which he is wanted is torture contrary to section 134 of the 1988 Act.

24. The Extradition (Torture) Order 1991 (annexed)[1/] makes provision for extradition from Anguilla of persons accused of torture contrary to Section 134 of the 1988 Act, and an attempt to commit such an offence in the case of States Parties to the Convention.

1/ Document available for consultation at the Centre for Human Rights.

25. Section 22(6) of the Extradition Act 1989 and paragraph 15 of Schedule 1 to that Act re-enact section 136(2) of the Crimninal Justice Act 1988, which provided that any act or omission, wherever committed, which constitutes torture and a corresponding offence against the law of any State with which an extradition treaty has been concluded shall be deemed to be an offence committed within the jurisdiction of that State.

Article 9

26. Assistance of the kind required by this Article could be provided in accordance with the applicable extradition laws and, in the case of the United States of America, with arrangements for mutual assistance in criminal matters which are given effect in the British Virgin Islands by the Mutual Legal Assistance (United States of America) Act 1990.

Article 10

27. The prohibition against torture is well understood by civil law enforcement personnel (the British Virgin Islands have no military forces), medical personnel, public officials and others who may be involved in the custody, interrogation or treatment of an individual subjected to any form of arrest, detention or imprisonment. The training programmes for such persons include instruction on the need to treat everyone with humanity and respect and to act within the law at all times. Such persons may also be subject to disciplinary codes, as to which they would of course be instructed, containing relevant prohibitions. For example, it is a disciplinary offence under Regulation 6(h) of the Police Regulations, made under section 7 of the Police Act, for any Inspector, subordinate police officer or constable to use any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty.

28. As regards categories other than law enforcement personnel, an example of a relevant prohibition by law is section 32 of the Mental Health Ordinance 1985, which provides that "Any person employed in a hospital who (a) wilfully neglects, (b) wilfully ill-treats, or (c) except in self-defence or in the interest of a patient, strikes any patient of that hospital" is guilty of an offence.

Article 11

29. The interrogation rules, instructions methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, are reviewed as necessary in the

circumstances of the British Virgin Islands, where there has been no known instance of torture or any associated practice.

30. The "Judges' Rules" formerly in force in England and Wales continue to be applied in the British Virgin Islands. These set out rules for the questioning of suspects by the police and for the cautioning of such suspects. It is likely that case-law decisions arising from the application of the Codes of Practice under the Police and Criminal Evidence Act 1984 of the United Kingdom, which superseded the "Judges' Rules" in England and Wales (and particularly, in this context, from the application of the Code of Practice for the Detention, Treatment and Questioning of Persons by Police) would be regarded by the courts of the British Virgin Islands as having persuasive authority in circumstances similar to those envisaged by the "Judges' Rules" or, where appropriate, in circumstances as to which those Rules are silent.

Article 12

31. The police are under a general duty to carry out, quickly and effectively, an impartial investigation of any alleged offence.

Article 13

32. The right of an individual who claims that he has been subjected to torture to complain, and to have his case promptly and impartially examined, as required by the first sentence of this Article, is secured by the general law of the British Virgin Islands. Steps would also be taken, under the general law, to ensure protection of the complainant and witnesses.

33. There are also special provisions for the handling of complaints in particular cases. For example, Rule 15 of the Prison Rules, made under section 27 of the Prison Ordinance, provides that "The Officer-in-Charge shall at all reasonable times be ready to hear the complaints of any prisoner and, should he deem it necessary, shall report the same to the Visiting Committee". Rule 58 provides that "Subordinate officers shall inform the Officer-in-Charge of any prisoner who desires to .... make any complaint. Any neglect in carrying out this rule will be severely dealt with".

Article 14

34. Acts which constitute torture within the meaning of Article 1 of the Convention constitute civil wrongs for which remedies are available in civil proceedings for, notably, trespass to the person. In such proceedings

compensation for the pain and suffering and any other damage caused would be available, including exemplary damages where appropriate. Such proceedings stem from the common law. Were a victim of torture to die as a result of his treatment, his dependents would be able to claim in respect of his death by virtue of the Fatal Accidents Act.

Article 15

35. The common law rule of evidence applies so that admissions obtained as result of torture or other oppressive means would not be admissible.

Article 16

36. As explained in Part I above, other international obligations which apply to the British Virgin Islands - in particular, those of Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention on Human Rights - already required the prevention of acts of the kind described in this Article. The Government of the British Virgin Islands, which would view with grave concern any instance of unlawful ill-treatment committed by or at the instigation of or with the consent of a public officer or other person in an official capacity, has not considered that any change in existing law or practice there was necessary for the fulfilment of those obligations. In the light of judgments of the European Court of Human Rights, however, the position as regards judicial corporal punishment under the laws of the Islands - notably, the Corporal Punishment Ordinance 1949 - is, at the request of the United Kingdom Government, under review.

37. Some instances of ill-treatment covered by this Article would amount to a criminal offence under the common law or be contrary to sections of the Offences against the Person Ordinance. The ill-treatment concerned could also provide a basis for civil proceedings.

GIBRALTAR

Part 1: Information of a general nature:

1. The United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) on behalf of Gibraltar, among other territories, and the Convention took effect for Gibraltar, pursuant to Article 27, on 7 January 1989.

2. The ratification by the United Kingdom of the International Covenant on Civil and Political Rights on 20 May 1976 also included Gibraltar. Article 7 of that Covenant provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

3. The European Convention on Human Rights has been in force for Gibraltar since 23 November 1953. Article 3 of that Convention provides that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". By successive declaration made since 12 September 1967 (currently declarations of 11 January 1991), the United Kingdom has accepted in respect of Gibraltar the right of individual petition under Article 25 of the European Convention on Human Rights under Article 46 of that Convention.

4. The Constitution of Gibraltar which is contained in the Gibraltar Constitution Order 1969 came into operation on 23 May 1969. Chapter I of the Schedule of the Gibraltar Constitution enshrines provisions for the protection of the Fundamental Rights and Freedoms of the Individual. Section 5 of the said Chapter I deals specifically with the rights of individuals to be protected from inhuman treatment and states that "no person shall be subjected to torture or to inhuman or degrading punishment or other such treatment".

5. Section 134 of the Criminal Justice Act 1988 of the United Kingdom, which section came into force on 29 September 1988, made it an offence to torture a person in the circumstances there described. Sections 134 and 135 of that Act, modified as in Schedule 1 to the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988, was extended to Gibraltar and to other territories by that Order, which came into force on 7 January 1989. A copy of the Order is annexed to this report.

6. It is also an offence under section 1 of the Geneva Conventions Act 1957 of the United Kingdom to commit a grave breach of any of the four Geneva Conventions governing armed

conflict. One such grave breach is torture of a protected person or the subjection of him to inhuman treatment. By virtue of the Geneva Conventions Act (Colonial Territories) Order in Council 1959, as amended, that Act extends, with specified exceptions, to Gibraltar and other territories.

7. The Law in Gibraltar ensures that a person is entitled to allege that his fundamental rights and freedoms under the Gibraltar Constitution including Section 5 thereof, have been contravened in relation to him. He is entitled to apply to the Supreme Court of Gibraltar to invoke the provisions of the Constitution and if there has been a breach of them, he can apply to the Supreme Court for redress. Additionally the Supreme Court of Gibraltar can grant whatever relief or offer whatever remedy, without limitation, it considers is appropriate to meet the circumstances of any such complaint which is established.

Part 2: Information in relation to the Articles in Part 1 of the Convention.

Article 2

8. The Laws of Gibraltar include a variety of criminal offences, several of which may arise out of conduct consisting of torture, or of subjecting an individual to inhuman treatment.

9. Under Part 9 of the Criminal Offences Ordinance, conduct constituting Torture, might involve the commission of murder, under Section 59 thereof, or secondly of Wounding with Intent to do Grievous Bodily Harm under Section 75 thereof, or thirdly of Assaulting Occasioning Actual Bodily Harm under Section 94 thereof, or fourthly, of Unlawfully and Maliciously Administering any Poison or other Destructive or Noxious Things under Section 79 thereof.

10. The Laws of Gibraltar also protect young persons from conduct constituting Torture. Section 82 of the Criminal Offences Ordinance makes it a criminal offence for a Child or Young Person under the Care or Custody of an individual to be wilfully assaulted or ill-treated in a manner likely to cause any injury to health.

11. Assaults on a person are also actionable under the Civil Law of Gibraltar.

Article 3

12. Extradition from Gibraltar to the United Kingdom is governed primarily by the Fugitive Offenders Act 1967 which is extended to Gibraltar by the Fugitive Offenders

(Gibraltar) Order 1967.

13. Upon Extradition the Authorities in Gibraltar will always ensure that a person will not be expelled from Gibraltar if it is considered that that person may be subjected to torture or inhuman treatment. Thus for example, under Section 4 of the Act "a person shall not be extradited if it appears to the Governor of Gibraltar that the request for his return (though purporting to be made on account of a relevant offence) is in fact made for the purpose of punishing him on account of Race, Religion or Nationality".

Article 4

14. All forms of acts which constitute Torture, are punishable under the Laws of Gibraltar and some criminal offences are subject to a maximum sentence of life imprisonment.

15. Additionally, all attempts to commit such criminal offences are also punishable under Section 7 of the Criminal Offences Ordinance whilst under Section 8 of the Criminal Offences Ordinance, a person convicted of an attempt to commit such an offence "shall where no punishment is specified for such attempt, be liable to be punished in the same manner as if he had been convicted of the offence with which he was charged".

16. Conspirators of offences which constitute Torture will also be punished in the same way as the main offenders under Section 17 of the Criminal Offences Ordinance which states that a person who "aids, abets, counsels, procures or commands the commission of an offence, is liable to be dealt with, indicted, tried and punished as a principal offender".

Article 5

17. The provisions of Section 134 of the Criminal Justice Act 1988, as modified and extended to Gibraltar, apply by their terms to acts of the kind prescribed therein "whether in the Territory or elsewhere" and to a person falling within either subsection 1 or subsection 2", whatever his nationality".

Article 6

18. If the Police Authorities in Gibraltar are informed or suspect that a person who is present in Gibraltar is alleged to have committed Torture or to have attempted to commit Torture or to be guilty of complicity or participation in Torture, the Police are authorised under the Laws of Gibraltar to commence an investigation into the case. Under Section 6 of the Criminal Procedure Ordinance a Police

Officer may arrest a person whom he suspects on reasonable grounds of having committed or being likely to commit any offence punishable by imprisonment, which includes all offences arising as a result of conduct constituting Torture. Additionally, if the alleged offender is arrested, he will be brought into Lawful Custody under Section 18 of the Criminal Offences Ordinance.

19. Under Section 19 of the Criminal Offences Ordinance, the alleged offender has the right to inform one person, reasonably named by him, of his arrest, which includes for all purposes informing the individual representative of the State of which he is a national, of his arrest.

Article 7

20. The Governing Laws in Gibraltar with respect to the Investigation and Prosecution of alleged Criminal Offences adheres to the requirements of Article 7 of the Convention.

21. Section 3 sub-section 3 of the Gibraltar Constitution states that any person who is arrested or detained upon reasonable suspicion of his having committed a Criminal Offence shall be brought without undue delay before a Court of Law.

22. Additionally Section 8 sub-section 1 states that if a person is charged with a Criminal Offence then he shall be afforded a fair hearing within a reasonable period of time by an independent and impartial Court established by Law. The terms of the Gibraltar Constitution therefore conform adequately with the requirements of Article 7 of the Convention.

Article 8

23. Article 8 of the Convention is given effect by the Fugitive Offenders Act 1967 extended to Gibraltar by the Fugitive Offenders (Gibraltar) Order 1967 and as set out below.

24. Section 136 of the Criminal Justice Act 1988, the effect of which is preserved by section 38(4) of the Extradition Act 1989, ensures that in existing arrangements with a State also party to the Convention, a person is extraditable where the offence for which he is wanted is torture contrary to section 134 of the 1988 Act.

25. The Extradition (Torture) Order 1991 (annexed)[1/] makes provision for extradition from Gibraltar of persons accused of torture contrary to section 134 of the 1988 Act, and an attempt to commit such an offence in the case of States

1/ Document available for consultation at the Centre for Human Rights.

Parties to the Convention.

26. Section 22(6) of the Extradition Act 1989 and paragraph 15 of Schedule 1 to that Act re-enact section 136(2) of the Criminal Justice Act 1988, which provided that any act or omission, wherever committed, which constitutes torture and a corresponding offence against the law of any State with which an extradition treaty has been concluded shall be deemed to be an offence committed within the jurisdiction of that State.

Article 9

27. Gibraltar's Evidence Ordinance enables Gibraltar to assist in obtaining evidence required for the purposes of Proceedings in other jurisdictions and to secure the attendance of witnesses in connection with such Proceedings and general mutual assistance between Countries.

Article 10

28. Law Enforcement Personnel in Gibraltar including Military and Medical Personnel, Public Officials and the Police Force are all fully aware of the prohibition against Torture in Gibraltar as enshrined in the Gibraltar Constitution and in the several Criminal Offences enacted by the Gibraltar Legislation.

29. The performance and acts of the Gibraltar Police Force in Gibraltar are subject to review by the Police Complaints Board, and additionally they are also subject to the Criminal Law. Offenders can be prosecuted for any acts or behaviour constituting Torture or any other cruel,inhuman or degrading treatment. Additionally, they can also be subjected to the issue of Civil Proceedings by Originating Summons under Section 15 of the Gibraltar Constitution and/or additionally, Civil Proceedings by a Writ for Damages for Trespass to the Person.

30. With respect to other Public Officials not being Law Enforcement Personnel, it is, for example, under Section 65 of the Mental Health Ordinance, an offence for a person being an Officer on the staff of or otherwise employed in a hospital to ill-treat or wilfully neglect a patient at the time receiving treatment for mental disorder, whether that patient is an inpatient in that hospital or is receiving such treatment as an outpatient.

31. It is also an offence for any individual to ill-treat or wilfully neglect a mentally disordered patient who is in that individual's custody or care. Under Section 65(3) a person guilty of an offence under Section 65 is liable on conviction on indictment to imprisonment for two years and

to a fine.

32. Similarly in the context of Prisons, prisoners are protected from being subjected to torture or inhuman treatment under Section 91 of the Prison Regulations 1987 which states that "a Prison Officer in dealing with a Prisoner shall not use force unnecessarily, and when the application of force to a Prisoner is necessary, no more force than is reasonably necessary shall be used".

Article 11

33. All Law Enforcement Officers in Gibraltar adhere to the Interrogation Rules, Instructions, Methods and Practices with respect to persons subjected to arrest, detention or imprisonment in Gibraltar in accordance with the Judges' Rules. The Codes of Practice under the Police and Criminal Evidence Act 1984 of the United Kingdom have not been extended to Gibraltar as yet and therefore all preliminary procedure in Criminal Investigation is based on the procedural Rules contained in the Judges' Rules.

Article 12

34. The Constitution of Gibraltar and its Laws generally ensure that whenever there are reasonable grounds to believe that an act of Torture has been committed in Gibraltar, all the relevant authorities are under a duty to carry out an effective and impartial investigation into the alleged offence.

Article 13

35. An individual in Gibraltar who alleges he has been subjected to torture therein has the right to complain to the competent authorities under Section 15 of the Gibraltar Constitution, (which states that if any person alleges the contravention of the provisions of the Constitution which includes Section 5 thereunder being the protection from Torture and Inhuman Treatment), that person may apply to the Supreme Court for redress; and under "sub-section 2, the Supreme Court shall have original jurisdiction to hear and determine any application made by any persons in pursuance of Section 15 and may ..... secure the enforcement of the provisions of the Constitution to the protection of which the person concerned is entitled".

36. There are also specified provisions in the legislation of Gibraltar which allows individuals to complain of particular cases. For example, prisoners are allowed to lodge complaints and to have a reasonable opportunity of being heard by the Prison Superintendent under the Prison Regulations 1987; Section 92 thereof states that a Prison

Officer shall report to the Superintendent all complaints made by prisoners and the Superintendent shall give any prisoner who complains reasonable opportunity of being heard.

Article 14

37. Acts which constitute Torture within the meaning of Article 1 of the Convention may constitute a Civil wrong for which remedies are available in Civil Proceedings. Additionally where a victim of Torture or Inhuman Treatment dies as a result of such treatment, his dependants are able to claim in respect of his death by virtue of Part IV of the Contract and Tort Ordinance; Section 6 thereunder states that where the death of a person is caused by a wrongful act "neglect, or default and the act of neglect or default is such as would have entitled the party injured to maintain an action and recover damages in respect thereof, the persons or body of persons, who would have been liable if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured". Additionally Section 6 (2) states that every such action shall be brought for the benefit of the dependants of the person whose death has been so caused.

38. Civil Proceedings can also be brought for trepass to the person and such proceedings will attract claims for damages including compensation for pain and suffering.

Article 15

39. Any Statements which are obtained as a result of oppression or torture are admissible in evidence in the Gibraltar Courts. Such Statements are subject to the Common Law Rules of Evidence and to the principles enshrined in the Judges' Rules with respect to the admissibility of voluntary statements and confessions.

Article 16

40. The Government of Gibraltar would view with grave concern any instance of unlawful ill-treatment committed by or with the consent of a Public Officer even if this treatment does not amount to Torture. Therefore all preventive measures and procedural guarantees contained in the Convention will be extended by Gibraltar to cover other Acts of Cruel Inhuman or Degrading Treatment or Punishment which do not amount to Torture and which Acts shall be subject to penal measures and custodial sentences.

FALKLAND ISLANDS

Part I: Information of a general nature

1. The Government of the Falkland Islands fully supports the objectives and principles reflected in the Convention. The Convention took effect for the Falkland Islands pursuant to Article 27, on 7 January 1989.

2. The ratification by the a United Kingdom of the International Covenant on Civil and Political Rights on 20 May 1976 also included the Falkland Islands. Article 7 of that Covenant provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The European Convention on Human Rights has been in force for the Falkland Islands since 14 September 1964. Article 3 of that Convention provides that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". By successive declarations made since 12 September 1967 (currently declarations of 11 January 1991), the United Kingdom has accepted in respect of the Falkland Islands the right of individual petition under Article 25 of the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights under Article 46 of that Convention.

3. Chapter I of the Constitution of the Falkland Islands (Schedule 1 of the Falkland Islands Constitution Order 1985) deals with the protection of fundamental rights and freedoms of the individual and contains in section 5 a provision in the following terms -

> "5. No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment."

The provisions of section 16 of the Falkland Islands Constitution confer rights on any person who alleges that any provision of sections 1-15 of the Constitution has been, is being or is likely to be contravened in relation to him or, in the case of a person who is detained (if any other person alleges such a contravention in relation to the detained person), the right to make direct application to the Supreme Court of the Falkland Islands for redress. Under section 16 of the Falkland Islands Constitution that Court has power to hear and to determine any such application and to make such Declarations and Orders, issue

such Writs and give such Directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of the provisions in question.

4. Section 134 of the United Kingdom Criminal Justice Act 1988 makes it an offence to torture persons in the circumstances there described. This section, together with section 135, was extended to the Falkland Islands by Order in Council made pursuant to section 138 of the Act: see the Criminal Justice Act (Torture) (Overseas Territories) Order 1988, S.I. 1988 No.2242, which came into force on 7 January 1989. A copy is annexed to this report.

5. The provisions of the Geneva Conventions Act 1957 were extended to the Falkland Islands, as a colonial territory of the United Kingdom, by an Order in Council in 1959 (the Geneva Conventions Act (Colonial Territories) Order in Council 1959) and subsequently amended in 1962. Section 1 of the 1957 Act which renders it an offence to commit a grave breach of any of the four Geneva Conventions governing armed conflict thus applies to the Falkland Islands. One such grave breach is torturing a protected person or subjecting him to inhuman treatment.

6. It is an offence in the Falkland Islands, as a matter of the common law and also in the particular circumstances provided for in the Offences Against the Person Act 1861 (which applies to the Falkland Islands under the Crimes Ordinance 1989), to assault a person. Recourse to torture would, in some circumstances, involve the commission of an offence at common law or under the 1861 Act: for example, murder. An assault also gives rise to a breach of the civil law and can found a civil action. The conduct prohibited by the criminal or the civil law includes conduct falling short of torture but which may amount to cruel, inhuman or degrading treatment or punishment.

7. Both at common law applying in the Falkland Islands and under the Criminal Justice Ordinance 1988 a confession made by an accused person may not be given in evidence against him if it was obtained by oppression (which is defined as including torture, inhuman or degrading treatment or the use or threat of violence); see further below.

8. These matters are dealt with in more detail as they arise under the different Articles of the Convention in Part II of this Report.

Part II: Information in relation to each of the Articles in Part I of the Convention

Article 2

9. Under the law of the Falkland Islands, conduct constituting torture would involve a number of possible serious offences. It would also involve a breach of section 5 of the Falkland Islands Constitution. It would be an offence under section 134 of the Criminal Justice Act as modified and extended to the Falkland Islands. It might also involve the commission of murder or of an offence under the Offences Against the Person Act 1861: for example causing grievous bodily harm or wounding with intent to do grievous bodily harm, contrary to section 20 of that Act, threatening to kill someone (whether the person to whom the threat is made or another) contrary to section 16, and administering poison, contrary to section 23.

Article 3

10. The position in the law of the Falkland Islands as to extradition for torture is governed by the Extradition (Torture) Order 1991 (see paragraph 21 below).

11. There are powers under the Immigration Ordinance 1987 and the Immigration Rules 1987 and the Regulations made under that Ordinance to deport individuals lawfully within the Falkland Islands and to remove those refused entry or who have entered illegally. However, directions given by the Governor under the Ordinance require that any case where a person claims to be a refugee is to be referred to him personally for decision. The 1951 United Nations Convention on refugees and its 1967 Protocol apply to the Falkland Islands. By reason of the matters stated, in the result no-one is deported or removed from the Falkland Islands to a country in respect of which the person in question has a

> "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion"

within the terms of the 1951 Convention.

12. Many of those who are protected by Article 3 of the Convention Against Torture will also be protected by Article 1 of the Refugee Convention. In a range of cases where an individual would face risks outside the scope of Article 1 of the Refugee Convention but has no other claim to stay in the Falkland Islands, the Governor has power to grant exceptional leave to remain. Any claim of likely torture on return to another country would be assessed under both the Refugee Convention and the possible use of exceptional leave.

Article 4

13. As indicated above, acts or omissions constituting torture are offences under section 134 of the Criminal Justice Act as modified and extended to the Falkland Islands and torture is capable of constituting other serious offences as well. Murder, torture contrary to section 20 of the 1989 Ordinance, and offences contrary to section 18 of the 1861 Act carry a maximum sentence of life imprisonment. The offences of threatening to kill and of administering poison carry maximum penalties of ten years' imprisonment. A grave breach of the Geneva Convention carries with it a maximum penalty of fourteen years' imprisonment unless the conduct involves killing, in which case the maximum penalty is life imprisonment.

14. By virtue of section 1 of the Criminal Attempts Act 1981, which has been applied by law of the Falkland Islands, it is an offence in the Falkland Islands to attempt to commit torture as defined in section 134 of the Criminal Justice Act or to attempt to murder a person or to attempt the other offences which might be committed if a person is tortured.

15. Conspiracy to torture or to commit the other offences described above is also a serious offence in the Falkland Islands by virtue of section 1 of the Criminal Law Act 1977 which, again, applies to the Falkland Islands by virtue of law of the Falkland Islands. In relation to conspiracy to torture contrary to section 134 of the Criminal Justice Act, to murder or to wound or cause grievous bodily harm contrary to section 18 of the 1861 Act, a maximum sentence of life imprisonment may be imposed. In the case of a conspiracy to commit the other offences against the person, the maximum sentence is ten years, the same as that for the other offence. A person who aids, abets, counsels or procures the commission of any of the above offences is, by virtue of section 8 of the Accessories and Abetters Act 1861 which applies to the Falkland Islands by law of the Falkland Islands, is liable to be tried and punished as a principal offender.

Article 5

16. The provisions of section 134 of the Criminal Justice Act 1988 as modified and extended to the Falkland Islands apply by their terms to acts of the proscribed kinds whether "in the Territory or elsewhere" and to a person falling within either subsection (1) or subsection (2) "whatever his nationality".

17. In the case of murder and the offences under the 1861 Act referred to above, again the Falkland Islands Courts have jurisdiction only if the Act was carried out in the Falkland Islands. Nevertheless, where the offence is committed by a British citizen and amounts to murder or manslaughter, the English Courts have jurisdiction as explained in paragraph 37 of the United Kingdom Report. Over eighty per cent of persons resident in the Falkland Islands are British citizens.

18. Offences committed on board a ship or aircraft registered in the Falkland Islands, or by a British citizen resident in the Falkland Islands on board a foreign ship, are in certain circumstances within the jurisdiction of the British (not Falkland Islands) Courts by virtue of sections 686 and 687 of the Merchant Shipping Act 1894 and section 92 of the Civil Aviation Act 1982 in their application to the Falkland Islands.

Article 6

19. Paragraphs 40-44 of the United Kingdom Report, so far as they relate to England, also hold good in relation to the Falkland Islands. Section 24 of the Police and Criminal Evidence Act 1984 finds an equivalent in the Criminal Justice Ordinance 1989 of the Falkland Islands, and the Bail Act 1976 (referred to in paragraph 41 of the United Kingdom Report) was applied to the Falkland Islands by that Ordinance. Equally the English Codes of Practice mentioned in paragraph 41 have been applied, with modifications for local circumstances, in the Falkland Islands. Equally sections 56, 58 and 66 of the Police and Criminal Evidence Act 1984 (mentioned in paragraph 43 of the United Kingdom Report) either have direct equivalents in the Criminal Justice Act 1988 or form part of the law of the Falkland Islands under other local law.

Article 7

20. Everything stated in the United Kingdom Report in paragraphs 45-47 in relation to England holds good in relation to the Falkland Islands by reason of the application, in the manner above described, of the Codes under the 1984 Act and the provisions of local law above mentioned.

Article 8

21. To satisfy the requirements of Article 8, the United Kingdom has made the Extradition (Torture) Order 1991 (annexed) which came into force on 22 August 1991 and which by virtue of Article 6 and Schedule 5 to the Order applies the Extradition Act 1989 to the Falkland Islands so as to

make extraditable the offence described in section 134 of the Criminal Justice Act 1988 (torture) and an attempt to commit such an offence in the case of States Parties to the Convention. The Order does not apply to those States Parties (Commonwealth countries and Parties to the European Convention on Extradition) in relation to which the definition of extraditable offence already includes offences of the kind mentioned in the Order, except to the extent that extradition arrangements continue in force in respect of extradition between Parties to the European Convention and the Falkland Islands (and the other territories mentioned in Schedule 5 of the Order).

Article 9

22. The Falkland Islands are able fully to comply with the Article. Section 5 of the Extradition Act 1873 and section 5 of the Evidence (Proceedings in Other Jurisdictions) Act 1975 both apply in the Falkland Islands as they do in the United Kingdom. In December 1991 the Criminal Justice (Amendment) Ordinance 1991, which contains provisions in all substantial respects identical with those of the Criminal Justice (International Cooperation) Act 1990 mentioned in paragraph 53 of the United Kingdom Report, was enacted. The Ordinance is about to be brought into effect. Thus everything said in paragraph 53 of the United Kingdom Report also holds good in relation to the Falkland Islands.

Article 10

23. The prohibition against torture and other forms of cruel, inhuman or degrading treatment or punishment is, as has been mentioned, provided for by the Falkland Islands Constitution. It is well understood throughout the Falkland Islands.

24. All training programmes for local police officers and any other persons involved in the custody, questioning or treatment of any individual subject to any form of arrest, detention or imprisonment emphasise the need to treat all persons, regardless of nationality, race, gender or religious belief with humanity and respect, and to act within the law at all times.

25. There has been no identified local instance of torture. Falkland Islands health care professionals have universally received their training in the United Kingdom. For that reason everything stated in paragraphs 57 and 58 of the United Kingdom Report holds good in respect of the Falkland Islands.

Article 11

26. The Criminal Justice Ordinance 1988 governs police powers in the Falkland Islands in relation to the arrest, detention and questioning of suspects. As above stated, the first four Codes of Practice applying in England under the Police and Criminal Evidence Act 1984 have been applied to the Falkland Islands. The fifth Code of Practice which governs the tape recordings of interviews with suspects has not yet been adopted. At the present time interviews with suspects are not tape recorded in the Falkland Islands, but consideration is being given to the possibility of doing so and applying the same rules as currently apply in England.

Article 12

27. It is the duty of the police to investigate impartially any alleged offence quickly and effectively. They have all the powers necessary to do so under the laws of the Falkland Islands. Anybody who alleges that he has been the subject of torture may go to the police with his complaint. In the unlikely event that he should feel that his complaint has not received attention, well-known mechanisms exist for him to complain about the police refusal adequately to investigate the matter: to the Governor, the Attorney General or the Police Advisory Committee, any of which would investigate the complaint.

28. Under the Prisons Ordinance a Board of Visitors exists which visits the prison at regular intervals. The Board interviews every prisoner present in the prison and records any complaint he has to make. Equally there are generous arrangements for prisoners to be visited by their friends and relatives who are permitted to see prisoners in private or out of the hearing of a prison officer. No complaint of torture or other cruel, inhuman or degrading treatment of a prisoner has yet been received from any source. Prisoners have access to the Courts for the purpose of bringing civil proceedings, or for the purpose of alleging a breach of the Constitution in respect of their treatment, and should a claim by a prisoner succeed Courts have power to award damages. As in England, a prisoner may also apply to the Supreme Court for judicial review of decisions made by the prison authorities concerning his or her detention.

29. Although there is no hospital or institution in the Falkland Islands specifically provided for the mentally ill, the Mental Health Ordinance 1987 contains provisions corresponding to those of the Mental Health Act 1983 and mentioned in paragraph 78 and subsequent paragraphs of the United Kingdom Report. The Criminal Procedure (Insanity) Act 1964, mentioned in paragraph 85 of the United Kingdom Report also applies in the Falkland Islands.

Article 14

30. The rights of the victim of an act of torture to obtain redress and to fair and adequate compensation have been dealt with in earlier paragraphs. It is, however, specifically confirmed that the law of the Falkland Islands enables the dependants of a victim of torture who has died to obtain compensation.

Article 15

31. Section 701(2) of the Criminal Justice Ordinance 1988 provides:-

"(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the Court that the confession was or may have been obtained:-

(a) by oppression of the person who made it;

(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confessions which might be made by him in consequence thereof,

the Court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the Court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid."

Article 16

32. The obligations of the United Kingdom under this Article are met, in relation to the Falkland Islands, in the manner set out in this Report.

Annex

1988 No. 2242

OVERSEAS TERRITORIES

The Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988

Made 21st December 1988

Coming into force 7th January 1989

At the Court at Buckingham Palace, the 21st day of December 1988

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 138(1) of the Criminal Justice Act 1988(a), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is herby ordered, as follows:

1. This Order may be cited as the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988 and shall come into force on 7th January 1989.

2.-(1) Sections 134 and 135 of the Criminal Justice Act 1988, modified as in Schedule 1 hereto, shall extend to the Territories specified in Schedule 2 hereto.

-(2) For the purpose of construing those sections as part of the law of any Territory to which they so extend "the Territory" means that Territory, including its territorial waters.

G.I. de Deney
Clerk of the Privy Council

SCHEDULE 1 Article 2

SECTIONS 134 AND 135 OF THE CRIMINAL JUSTICE ACT 1988 AS MODIFIED

134.-(1) A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the Territory or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.

-(2) A person not falling within subsection (1) above commits the offence of torture, whatever his nationality, if:

(a) in the territory or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence;

(i) of a public official; or
(ii) of a person acting in an official capacity; and

(b) the official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it.

-(3) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission.

-(4) It shall be a defence for a person charged with an offence under this section in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct.

-(5) For the purposes of this section "lawful authority, justification or excuse" means:

(a) in relation to pain or suffering inflicted in the Territory, lawful authority, justification or excuse under the law of the Territory;

(b) in relation to pain or suffering inflicted outside the Territory:

(i) if it was inflicted by an official of the Territory acting under the law of the Territory or by a person acting in an official capacity under that law, lawful authority, justification or excuse under that law;

(ii) in any other case, lawful authority, justification or excuse under the law of the place where it was inflicted.

-(6) A person who commits the offence of torture shall be liable on conviction on indictment to imprisonment for life.

135.-(1) Proceedings for an offence under section 134 above shall not be begun in the Territory except by, or with the consent of, the Attorney-General of the Territory.

-(2) In this section the expression "Attorney-General" includes the Solicitor-General, and if neither of such officers exists, the expression means that officer whose functions include the general control of public prosecutions.

SCHEDULE 2 Article 2

TERRITORIES TO WHICH SECTIONS 134 AND 135 OF THE CRIMINAL JUSTICE ACT 1988, AS MODIFIED IN SCHEDULE 1, EXTEND

Anguilla
Cayman Islands
Falkland Islands
Gibraltar
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
St. Helena
St. Helena Dependencies
Turks and Caicos Islands
Virgin Islands

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends sections 134 and 135 of the Criminal Justice Act 1988, subject to modifications, to the territories specified in Schedule 2 hereto.

The purpose of those sections is to give effect to provisions of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10th December 1984.